CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into alternative dispute resolution

Melbourne — 25 February 2008

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Witnesses

Mr P. McDonald, Executive Director, Children, Youth and Families Division,

Ms J. Noblett, Director, Youth Services and Youth Justice, and

Ms S. Robinson, Principal Policy Adviser, Department of Human Services.

The CHAIR — Welcome to the hearing this afternoon. I have just a few preliminaries. I think you are all aware that this hearing comes under the Parliamentary Committees Act, which means that it is covered by parliamentary privilege. Hansard staff will be recording the proceedings. Thank you for coming. We did receive all the material that you sent. We received these particular packages on Friday, so you will have to perhaps forgive the committee for not being right across it, but we will certainly use the material. We will throw it open to you to step us through, and we will have some questions and matters we would like to raise with you as we go through or when you have finished.

Mr McDONALD — Thank you for the opportunity, Chair, and thank you to the committee for inviting us to talk about the two alternative dispute programs we have in the department. First of all I will introduce Jan Noblett, the Manager of our Youth services and youth justice area, who oversees the youth justice group conferencing part, and also Sophie Robinson, Principal Project Officer with our Family services and child protection branch in relation to the alternative dispute resolution that we have in the Family Court division.

What we thought we would do today is, first of all, explain the youth justice group conferencing approach — the model, how it works, some of the data, and some of the areas that we think are the outcomes that we have received from this program and some areas of improvement. Depending on how the committee wants to approach it, we could stop there and take some questions, and then move on to the other alternative dispute resolution through our Family Court on child protection matters, or we could continue through.

The CHAIR — Okay, let us do the first bit and see how people feel.

Overheads shown.

Mr McDONALD — All right. As the slide indicates, it is the youth justice group conferencing program. It is an intervention based on restorative justice principles to provide community rehabilitation, intervention and also diversion in relation to the young person for more intensive supervisory court outcomes and also to increase responsibility for their offending through some of the reparation to the victim and the community. The Victorian group conferencing model happens at the pre-sentence and is diversionary and, as I said, based on those principles.

Our target group is between 10 and 18 and it reflects the intention of group conferencing to be a diversionary program. Magistrates have the discretion really to determine whether the level of the offending falls into the probation or youth supervision order range. It is for those people who have: pleaded guilty or who have been found guilty — and it does not include those offences up there of homicide, manslaughter, sex offences et cetera; committed offences serious enough for a probation or a youth supervision order as described; and been referred to the group conferencing program within 12 months of the offence. There is assessment for suitability by the youth justice area of the Department of Human Services in relation to the group conferencing and that the individuals consented to participate.

The enabling legislation to undertake group conferencing is under the Children, Youth and Families Act 2005 in relation to both deferrals and continuing group conferencing. Those who must attend are the child, of course, the child's legal practitioner, the informant or other members of the police force and also the convener. Those who may attend, and those we would like to attend but sometimes do not attend, are the members of the child's family, supporters of the child, the victim of the offence or the victim's representative, and also any other person who may be permitted by the convener. Further to that, often a youth justice worker or other case worker is also invited.

It needs to be chaired by a convener from one of the DHS-funded service providers and this is enshrined in the legislation. We can talk about how many and who in a tick. The confidentiality provisions apply and the discussion within a conference is protected by legislation.

Some of the data that is in front of you today, and this is between the period 2003 and 2007, is in relation to types and numbers of offences. There is a total number of offences of 1294 and they have been split up into three areas. Offences against the person category is basically recklessly causing injury, unlawful assault, reckless conduct endangering life, robbery and armed robbery. Examples of charges under property again are theft, theft of motor vehicle, burglary, going equipped to steal; and examples under offences against public order are those offences such as criminal damage, wilful damage, trespass, possess liquor under age and shop steal. Probably the public order ones have been identified in their own category due to the large number of charges which fit under this heading. In many of these cases it may be in relation to institutional or corporate victims, such as Connex, that may

choose to attend to represent themselves. The other section — that is 8 per cent — are things like unlicensed driving, possess cannabis, failure to appear and breaches of other orders.

Out of that 1294 in person that is about 373 separate conferences for that total number of charges there, to just give you an indication of the charge-conference ratio.

The CHAIR — That is over a four-year period?

Mr McDONALD — Over a four-year period.

Ms NOBLETT — Yes, we were unable to compile data before that period, so one of the things that has been put into your folders is the limitations of the data we were able to collect.

The CHAIR — Fair enough. So that 1300 is spread over the four years; is that right?

Mr McDONALD — Yes, that is right.

The CHAIR — And is it roughly the same each year or has it bunched up or declined?

Mr McDONALD — It has increased marginally over more recent years, as the reading of the data suggests, not big quantum leaps but it has increased certainly over the last two years.

Mr FOLEY — So when you say 373 conferences and 1294 charges, that is 373 youth offenders, or can someone go through the system and be counted twice in that 373?

Ms NOBLETT — Yes.

Mr FOLEY — So you do not know how many people have been through?

Ms NOBLETT — I do not think we have that data on individuals, no. It could be repeated.

Mr McDONALD — We can have a look a bit more into the detail if you like.

The CHAIR — Would it be fair to say that it is roughly a quarter of that figure, so just under 100 per year?

Mr McDONALD — Roughly. We might have a look into that.

Ms NOBLETT — One of the things I would say at this point is that the legislation only came into being in 2005. Prior to 2007 we had run a pilot, so some of this material goes back to the pilot that we ran. The expansion of the services only happened in late 2006, so the uptake has increased quite intentionally on our part. It does not actually relate to crime trends or offences. It is more about how we have expanded the program.

The CHAIR — Great. Sorry to interrupt.

Mr McDONALD — There is some further data on the next slide there. Looking at referrals, and particularly in relation to Indigenous young people, 18 per cent of referrals from the rural regions are Indigenous young people, and that probably demonstrates some of the closer linkages that the conveners have had in the rural areas to attract Indigenous young people, and that would be a positive overrepresentation. Normally these figures are presented as a negative overrepresentation, but it is a positive overrepresentation in relation to the numbers of Indigenous young people we have in the juvenile justice system. There is also a high number of victim or victim representative attendance at over 85 per cent of conferences. A high level of diversion is an outcome from the youth justice system, and more than 80 per cent receive good behaviour bonds as a result of this process; and 90 per cent of referrals progress through the conference process. So most of those that are recommended for referral went through this process, which is also encouraging.

There are some further observations about improvement or observations in relation to the model. There is a low number of Indigenous referrals in the metropolitan area. The completion rate of complaints made in group conferences is a reasonably high number, but about 10 per cent would reflect a lack of completion rate, and the number of referrals to new service providers in rural areas is in relation to some of the new funding rolling out and some traction taking place in those rural areas. The low number of Indigenous referrals in the metropolitan area

may be due to the process of the Koori justice court and some of the choices that are being chosen in relation to taking up the youth justice group conferencing, as opposed to the Koori youth justice court. We have also talked to our provider in the city about some further work to promoting such a scheme to the indigenous community within the metropolitan area.

In relation to the role of the department in group conferencing, there is program development and the ability to take feedback in the development of this program. We participate in the state advisory group, of which Judge Grant is the chair, which has a membership of representatives from all the pilot service providers, legal reps and judiciary, just to talk in relation to this program. The department funds the program, which operates statewide, at more than $800 000 per annum. That breaks down to 8 full-time staff and about 15 trained conveners across Victoria, and the current unit price is around $4000 per conference, plus also some increase. It is a bit above that in relation to the CPI at the moment. That was the base rate in 2006, but it would have crept up.

The CHAIR — How much was that?

Mr McDONALD — Estimated to be $4000 — not estimated; it is around $4000. There is a bit more of an increase, just above $4000, but it is around that mark.

In relation to policy and practice standards, there are policy and practice standards that we are involved with, and also there is the promotion of the program in relation to DVDs and some fliers and posters, and also our promotion of the program to the courts and others.

In relation to evaluation, we are monitoring the group conference. We funded the review of the pilot program in 2006, and we plan another review in 2009 in relation to the program. Some of the research findings so far of the review of the pilot program are in relation to victim participation. As I alluded to before, over 80 per cent of conferences involved victim participation, and the research indicates a conference is more effective if a victim participates, and we are quite pleased with that high rate of figures. Also victim service agencies do attend from time to time.

In relation to diversion, as I illustrated before, 86 per cent of those participating received a good behaviour bond, which is a non-supervisory order without conviction, and after 12 months only 16 per cent of group conference participants had reoffended compared to 40 per cent of those who had received probation orders.

In relation to the program, diverting people away from the supervised court orders and from further penetrating the criminal justice system is an obvious outcome that this program delivers. Also in relation to the 16 per cent of group conference participants that had reoffended, the pilot research indicated it reduces the frequency and seriousness of reoffending behaviour.

That is a pithy summary of the youth justice group conferencing. I am happy to move onto the child protection and family services.

The CHAIR — Are you going to say more about the reduction in frequency and seriousness of reoffending behaviour?

Mr McDONALD — Yes, we can say a bit more in relation to that.

The CHAIR — I am asking that because I thought there was a bit of a variation there on what that is really showing up in terms of reoffending. Are you getting a clear picture on that?

Ms NOBLETT — The picture we do have is from the evaluation that we developed in 2006. Beyond that, our next expected research opportunity would be 2009. One of the things we found, even in doing the initial investigation, is gathering numbers and tracking young people took a period of time just to develop the numbers, and I think we had just over 100 in the sample, so our findings are derived entirely from that at the moment, other than research findings. But in relation to our model, that is the findings that we have.

Mr FOLEY — 2006 was a review of the pilot program of 2005?

Ms NOBLETT — It goes back beyond that. The justice group conferencing I think commenced in about 1998, from recollection, but DHS took over that in the period around 2001, which is just a slim recollection, so the

pilot was more official from 2003 and beyond. We expanded the program from 2006 in anticipation of the legislation, and the legislation came into being in April 2007.

Mr FOLEY — So the 16 per cent figure after 12 months is — —

Ms NOBLETT — It relates to the pilot; that is correct.

Mr FOLEY — And you are not going to follow with a broader sample until 2009?

Ms NOBLETT — Yes.

Mr FOLEY — So there are no plans to have another look this year or next year?

Ms NOBLETT — Next year there would be.

Mr FOLEY — This year?

Ms NOBLETT — Not at this point.

Mr FOLEY — And that would be of the broader program?

Ms NOBLETT — That is right. One of the things we struggle to obviously get is referrals and numbers. The referral process is through the court, so we have pinned our efforts and priority at promoting the referral process in order to get a good quantum.

Mr CLARK — Could I clarify in relation to the 16 per cent compared to the 40 per cent, is the sample of 100 a random sample that is comparable with the population from which you have derived the 40 per cent figure, or has there been a preselection, as it were, of people who have been sent to the group conferences in terms of being those who are considered to be more suitable for the group conferencing program?

Ms NOBLETT — Arguably that could be construed in the population, but the researchers found it difficult to have control groups, if you like.

Mr CLARK — I understand that.

Ms NOBLETT — So the control groups that they had were existing young people on probation orders, and the group conference of young people were those who had gone through all of them. I am not sure that the young people on probation orders had actively been excluded from the group conferencing environment. I am informed they had not.

Mr CLARK — Those who were sent to group conferencing were those who were judged by the court or by some screening process to be potentially beneficiaries of that program; is that correct?

Ms NOBLETT — That is correct. And some of those considerations are about the nature of the offending and obviously the young person's capacity to manage that confrontation and do it in a meaningful way.

The CHAIR — Could I just ask you this: we have had witnesses come to the committee who have said that the current provision of services to different agencies has created and has the potential to create unevenness of standards around delivery. Firstly, do you agree with that; and, secondly, how do you pull them together to make sure there is consistency across the state?

Ms NOBLETT — There are two things. Through DHS we have provided them with the youth justice group conferencing program guidelines, which we have provided to you. They are fairly straightforward. We also provided the training, so we were a part of the training mechanism and we funded the training for the conveners. We meet with them on a frequent basis to work through some of those issues. I think the thing that we find a challenge or a potential developmental opportunity is the question of accreditation, which is sort of in the territory that you are talking.

The CHAIR — It is.

Ms NOBLETT — We are discussing with other jurisdictions and trying to look at models of accreditation. Queensland is one model that we are pursuing. The interesting thing is that most of the other jurisdictions run different models, certainly at different points of intervention. Ours is relatively unique in terms of where it sits. Often the other conferencing-type models will have it happen at the first point of contact, like with police.

The CHAIR — Do you think that DHS should have responsibility for regulation or should it be the Department of Justice?

Ms NOBLETT — I would think it was probably something in which youth justice would have good expertise in terms of youth, as opposed to other types of models. It is certainly a responsibility I think that we are most often the port of call for consultation in respect of models of intervention with young people, so in that respect I think those two things go well.

The CHAIR — Witnesses have talked about the marginal and disadvantaged groups — we are talking about CALD communities particularly here. What sort of work are you doing to make sure that groups like that are properly being serviced and attended to through these programs?

Ms NOBLETT — Mostly through our work with the conveners, but also in our work with the courts because the referral point is the court, so from our point of view it is about that stream or that intake process and how those numbers kind of flow through to — —

The CHAIR — They are low. There is under representation now, I believe.

Ms NOBLETT — That is right. I think through the work of the statewide advisory committee those sorts of matters are continuing to be discussed. One in particular is Indigenous young people in the metropolitan area and the other is CALD. It is very early days in terms of the development of any particularly new model, but it is certainly on our horizon as something we need to continue to evolve and develop.

The CHAIR — From your experience what do you think might be some of the measures that could be put in place that would improve the participation of young people from CALD communities?

Ms NOBLETT — I think it would be about the capacity of conveners to understand the particular groups. We have made some mistakes in the past in relation to gearing, if you like, our interventions for particular groups. In particular many years ago we developed models of intervention for Asian young people because there was a wave of drug trafficking cases through youth justice. That moved, but we were left with the infrastructure, which we had to remodel, so we are very mindful of having some flexible approaches to that group.

I think the measures would be about the capacity to communicate with those young people and whether that is around interpreters and all those sorts of tools. In terms of measures, I think we would be probably needing to embed performance measures or KPIs around what we anticipate would be relative targets, and that would probably be based on proportionality of those groups represented in youth justice more broadly.

Mr CLARK — In terms of KPIs, have you established a suite of KPIs for the program at present that you are tracking so you could tell us what indicators you have included?

Ms NOBLETT — Yes.

Mr CLARK — In particular are you collecting data on things like outcome plans, recidivism, participant satisfaction?

Ms NOBLETT — We have provided you with a set of the current key performance indicators. They will be in the pack that is related to youth justice. In the main they are obviously quantum and timeliness measures, so there are quantity, process, timeliness measures and outcome plans. We have not set a measure about the completion of outcome plans. We have set a measure about the commencement of the activity in the outcome plan because it is not our program model that conference conveners pursue outcome plans to the end; a percentage of those who are receiving the lower end order; and another one about Indigenous young people, but we have not as yet included what we have just discussed around CALD communities. There is demographic data that is also attached to that page, so it is case information to be collected. One page is about the key performance indicators and the other is about demographic data that the conveners collect.

The CHAIR — We will come back to some of that.

Mr McDONALD — If we move to the dispute resolution conferences, I will give you a bit of background on child protection and family services in numbers and the legal mandate. Child protection has the legal mandate to receive reports, investigate matters and initiate legal intervention in relation to any child who is assessed to be at risk of significant harm. Across the period 2001 to 2007 — we will just do the average to explain some of the turn through the system — on average about 37 684 reports per annum are received by child protection each year. Of these 12 284 proceeded to a protective investigation — that is, those cases that are assessed at intake and require a visit and an actual investigation by the Department in relation to the child, its wellbeing and welfare. Of those 12 284 that were investigated 7500 per annum were substantiated. Of those 7500, 2611 per annum end up being protection applications which are lodged with the Children's Court of Victoria. That just gives you a step-down scale from the notifications of how many per annum end up being applications to the Children's Court of Victoria.

To give you some background, dispute resolution conferences have been going on since 1992. In 1989 pre-hearing conference provisions were introduced into the Children and Young Persons Act. Pre-hearing conferences were introduced in the Family Division of the Children's Court to provide that opportunity for open and confidential discussion of the protective issues between parties. In relation to the Family Division and the CYFA, the Children, Youth and Families Act came into operation as recently as April 2007. The dispute resolution conferences provisions came into operation on 1 October 2007, and it is the responsibility of the Attorney-General to appoint the conveners. The implementation has been led by DOJ, and we have been involved in partnering DOJ in that sense since the DRCs have come in.

There are two types of dispute resolution conferences, and I will just go through the purpose. The purpose of the dispute resolution conference is to give the parties to the application the opportunity to agree or advise on the action. There are two types of action in relation to taking into account the best interests of the child, which is one of the centrepieces of the new Children, Youth and Families Act. There are two types of dispute resolution conferences. First of all there is the facilitative conference, which is explained there. This involves a third party being a convener with no advisory or determinative active role, but providing assistance in managing the process of dispute resolution. Then there is also the second option of advisory, which involves a convener who during the dispute resolution conference assesses the dispute, provides advice on the facts and identifies possible outcomes. The convener prepares a report to the court in relation to the advisory conference which outlines the matters in dispute and provides a recommendation on what is in the best interests of the child and how the suggested outcomes can be achieved.

At the moment the facilitative model of DRC is the only style of conferencing being utilised. The two models of the dispute resolution conference allow for development of one or both into the future and the continued flexibility in relation to which one best suits the child's best interests.

The CHAIR — Why is that? What is the approach?

Mr McDONALD — The advisory approach has not been taken up as an option; it is usually advised against. The facilitative approach is certainly an approach where the resolution of the problem is sought within the conferencing process. The advisory process is not seen or deemed to be a popular or positive process in relation to the court bringing in a third party to make an assessment to advise the court. We would probably suggest that there are some cases which would enhance and add value to the discussion about the best interests of the child by this process, but it certainly is not a preferred option.

The CHAIR — Who decides if you have a dispute on your hands?

Ms ROBINSON — Under the legislation the court is given the power to decide absolutely, but the convenor can make a recommendation and the court can hear from the parties as to that recommendation. Since the new Act has been in, my understanding is that there has been, I suppose, some problems with people not being confident about the advisory model in terms of the parties because of the confidentiality provisions being different, the purpose being that they can provide a report to the court. But as Paul indicated, there has not yet been the development to look at that model and how you might address those concerns within that model.

The purpose behind putting that model in the legislation was based on Professor Tania Sourdin's report on ADR to the Department in the overall review of the legislation. It looked into the future to allow broad legislative amendment to ADR. You could then look at how you develop those models into the future rather than putting in a

model that you would have to go back and change. The aim of the advisory was really to look at, potentially, someone expert in child welfare — maybe a paediatrician, maybe a psychologist — who could convene that type of conference and ultimately put a report to the court or become a witness in those proceedings about what they consider in their professional opinion as the child's best interests.

The CHAIR — So in the Act it is couched as an option?

Ms ROBINSON — It is.

Mr McDONALD — On dispute resolution conferences, the court and referral process, any application before the family division of the Children's Court may be referred, and the matter is referred when agreement cannot be reached and there is a possibility of resolution following further negotiation. As the committee may know there has been a clear increase in overall court activity in the period between 2001 and 2007. This includes increases in protection applications, adjournments and extensions of interim accommodation orders. In relation to the data, between the periods 2001 and 2007, 11 744 matters were referred to dispute resolution conferencing in that six-year period.

The CHAIR — Can I stop you there. The slide shows overall court activity in that six-year period. What does that mean: 'overall court activity'?

Mr McDONALD — There has been an increase in the number of protection applications coming to the court.

The CHAIR — That is from the public?

Mr McDONALD — From the Department in relation to taking those matters to court.

The CHAIR — Which was that number before.

Mr McDONALD — Yes. Victoria is doing very well when compared with other states in relation to increases in notifications and intake. We still ran 38 000. If you look at New South Wales, I think it is somewhere in the high hundreds of thousands. But the increase in Victoria in the numbers coming into court has been because of a range of factors. I think it includes the increase in the multiple risk factors for families, and the awareness of the new act. Certainly people are aware of the new act and with the promotion that is going on we are seeing more notifiers. Also partly in relation to demographics like population — —

The CHAIR — Yes, that is what you were saying before. When you say more notifiers, you mean amongst the public?

Mr McDONALD — Yes.

The CHAIR — The Department picks it up in the way you indicated before.

Mr McDONALD — That is right.

The CHAIR — And then it comes to the attention of the court.

Mr McDONALD — Yes, and so the more notifications we have to assess will have a flow-on effect to more investigations and to protection applications. There are population movements. There has been a baby boom in the last couple of years which has a flow-on effect. It is a bit smaller in relation to numbers, but it does have a flow-on effect in relation to the Department acting to assess and investigate the protection and interests of new infants as well.

I refer to some of the data analysis in relation to the dispute resolution conferences. Most common types of court applications referred are protection applications, extension of custody to secretary order and breach of supervision order. The outcomes of the dispute resolution conferences so far have been — and this is on the three indicators we assess on — settled, being the third; not settled; and matter adjourned, so roughly a third is split each way. Though I would say that there are matters settled further downstream from the dispute resolution conference. We think these are reasonably conservative figures in relation to the dispute resolution conference. We know that matters are

settled prior to contests and prior to directions hearings also further downstream, which may be attributed to the process of dispute resolution conference.

The CHAIR — Under those percentages, is there any kind of discernible trend at this point?

Mr McDONALD — I am not sure in relation to a trend over time, though in looking at the data that is presented, again there is an incremental increase in relation to settlement. It has been around a third. They have not been steeply rising or falling on any of those three matters. Drilling down to find out some further data, we only collect at the moment the settled, not settled and also matter adjourned data.

The CHAIR — Presumably settled means it is sorted out and everyone is happy, as it were.

Ms ROBINSON — Yes.

The CHAIR — But what does not settled mean?

Ms ROBINSON — That could mean that it is adjourned off for a final contest or, on some occasions, it might be adjourned off for a further interim order, where the child is placed and there could be further assessment. There might be a range of outcomes, but it has not been resolved at the dispute resolution conference.

The CHAIR — You have got matter adjourned as 32 per cent. I thought you said not settled means could be adjourned.

Ms ROBINSON — Maybe I am confusing those figures, then. Vicky has just explained to me that not settled means where it has gone off for a directions hearing, which is the next stage before a final contest. And then matter adjourned is for another reason.

Mr CLARK — Can I just clarify a bit more about the notion of settled here? As I understand it, we are talking primarily about matters concerning protection of children's welfare. If something is settled, who are the parties to the settlements? Who is it that is agreeing on a particular outcome? Is it child protection officers and the family?

Ms ROBINSON — It is the child protection officer as a delegate of the secretary who initiates the substantive application. It is them as a party who brings the application regarding the child. Normally the parents and sometimes other family members might have been joined to the proceedings. If the child is over seven years old, in the Children's Court there is a model of legal representation different from the Family Court that is a best interest representation. We have an instructions model; a lawyer acting for a child will act on their instructions to the court. The Department will represent what it says is in the best interest, and then the parents might also be represented or may not have representation if they do not get legal aid funding.

Mr CLARK — Just to put it beyond doubt, when it is settled, that means that the child protection officer as the representative of the Secretary is satisfied that the arrangements reached at the conference are adequate to protect the child?

Ms ROBINSON — Yes. It is a bit akin to criminal proceedings where you have a finding of guilt and then a sentence. In the Children's Court we have the protection application proved and then a recommendation of a final order. Settlement would include proving that application — that is, that the child is in need of protection and is at risk of significant harm — and then a recommended order often after that. It could be one of those orders listed as the most common outcomes or it could be a range of the other orders available under the act.

Mr CLARK — By the time it gets to the conference there has not been a court finding that the child is in need of protection?

Ms ROBINSON — Sometimes there is. Sometimes parties reach agreement on that beforehand and it is only the disposition, as it is called in the legislation, or the final order that is in dispute. But often not; usually everything is still up for discussion. It does not rule out the parties saying, 'We are agreeing to the protection application being proved. The issue here today is about the custody order that the department is seeking'.

Mr McDONALD — Let us go into the role of child protection in these conferences. Child protection is a party to the proceedings who attends the dispute resolution conference — and most likely it would be the applicant.

We attend as another party to the proceedings. There will be an allocated child protection practitioner and team leader to attend the dispute resolution conference. The team leader has authority to make decisions and negotiate proposals that would lead to a settlement. It is a practice instruction for all dispute resolution conferences that a team leader attends.

Our role, or child protection's role, in the dispute resolution conference includes of course attending well prepared, clearly outlining the Department's case and also views regarding the issues in relation to the best interest, providing a clear risk assessment analysis on the evidence through the investigation and the other processes we undertake, and considering proposals and maintaining flexibility in decision making. Child protection has access to legal representation prior to and during a dispute resolution conference. We can also discuss a particular case with solicitors, but we tend to attend the dispute resolution conference without the representation of the solicitors.

Some of the training for child protection staff in relation to this model and this option is outlined there for you. We do four days of this program for the beginning practice — this is for all new child protection practitioners. They go through a compulsory training, of which all four days of that will cover all aspects of the court work. It will also cover what is the dispute resolution conference role and the role of child protection. We also have Judge Paul Grant and other judges from the Children's Court come and speak to the new group. Beginning practice groups are run, I think, monthly or every six weeks. There is team leader training as well in relation to dispute resolution conferences. We also have barrister clinics to bring that to the attention of our staff.

That is a summary of the dispute resolution conference within the child protection and family services area. We are happy to take further questions.

The CHAIR — Witnesses have said to us that Departmental representatives often do not have the authority to make decisions that are appropriate to arriving at a settlement within the conference.

Mr McDONALD — We have a practice instruction in which our team leaders — which will be the oversighting officer of the case; those direct case workers will be reporting to that team leader — are to attend all dispute resolution conferences. There may be some cases in which that team leader is unable to attend and another CPW4, if I could use that description, which is a team leader equivalent, attends.

The CHAIR — That is the status, is it?

Mr McDONALD — Yes, that is the statutory level. I am aware also of other issues outside the dispute resolution conference in relation to matters in court and the desire of the Children's Court to have more senior personnel turn up to court.

We are looking at new models in relation to senior court officers representing in court a number of our cases on behalf of regions, which provides further support in decision-making authority within those other matters. But within the dispute resolution conference, it is our practice instruction that team leaders are expected to attend. If there are a number of matters with which they cannot proceed or that they are seeking, the decision to pursue or not to pursue may be a decision that requires a higher manager than the team leader to make those occasional decisions, which would be a unit manager. I think it would be in our interest that we send in staff — this is why we have got it as a team leader requirement — that can make the decision on the spot. The DRCs are negotiating environments where you want to capitalise on the moment, if I can put it like that, and that is our intention

The CHAIR — The objective is, as you say, to capitalise on the moment, and you need people in there that have sufficient authority and breadth to be able to make a decision. Then you say, of course, that it does happen when, because of the circumstance and complexity of the case, they wish to get other advice, which is quite right. What we are hearing is that it is a frustration that progress cannot be made because there is too much of this.

Mr FOLEY — I think, Chair, we have heard evidence that not only is it a grim area, and the reporting rates have shown it is very high, but part of the submissions we have heard relate to human resource issues that you have to deal with — the effect it has on your employees, the turnover of your employees, and the experience of your employees and that sort of stuff. What is your view on that also contributing to it? I think one submission suggested that a lot of people get poached on a regular basis. How does all of that focus?

Mr McDONALD — I think we are very aware of the increasing activity in the court and what that means not only for the magistrates in the court but in fact for our workers walking into an environment in which there are

a lot of matters in front of the court; it is about how to organise ourselves. I have talked with the Children's Court magistrates as recently as last Friday and some things we are actively looking at to strengthen the support and decision making within the court from the Department's end. We have a number of child practitioners who have been with us for under 12 months and as we recruit and recruit we need to make sure that they are receiving the experience and training. I am aware of general issues on decision-making authority within the court, but I have not received any advice on the dispute resolution conference side of things, because it is a practice instruction and I have not received advice nor direct complaint on the dispute resolution conference end.

But I will explain generally. Given the increased activity of the court we are actively considering at the moment putting senior court officers, as we would call them — they would be departmental child protection workers who are experienced in the court flow — to take on groups of cases to take into court, and to provide advice and also shadow our CPW2s and 3s, if you are with me; our young front-line staff. So we will be trialling that model in the eastern region and one other metropolitan region to see if that actually has a better business flow and decision-making flow for the court. But I would stress that in dispute resolution conferences it has not been our understanding that that has been an issue. I am aware of the general issue of the flow of the business in the court on that issue, but in relation to DRC, we believe that by putting in, making a practice instruction of the team leader in there, that that will be our expectation, that they can make the decision at the time. I think that is in our interests as well.

Maybe what is going on in relation to seeking further advice is when we are taking these into dispute resolution conferences, in a number of these cases we may be assessing the risk factor as quite high, and then our team leaders will be checking off with their unit managers so that we are perhaps with a number of cases moving into some second opinion judgement from the Department's end about whether we can manage or cope with the risk being that high.

I point out that 22 per cent of outcomes are interim protection orders, which gives an indication, saying, 'Let's go a little way along the track in this case and find out whether the family can pull it together' et cetera. I think we have been willing to enter into interim protection orders by taking that risk assessment but from time to time that would require a judgement or the unit manager to check that off.

Mr CLARK — If I could just follow on from that, I noticed with the data that you gave us for the settled cases, the various percentages, on my arithmetic, totalled 92 per cent, including 22 per cent resulting in interim protection orders. Do you know offhand what the remaining 8 per cent would be? And does it follow that for at least 92 per cent of the cases the outcome involves a confirmation that the child is at risk versus perhaps an outcome where the child protection officer was persuaded that no order was necessary after all? Is that a correct assessment of that data; or in those instances where the child protection officer is convinced that an order is not necessary, would that go into the category of adjourned cases rather than settled cases?

Ms ROBINSON — In the data we have provided in this booklet, figure 4 will show you the breakdown of that other 8 per cent, which is basically a range of other orders available under the legislation. I think for the purposes of the presentation we just put in the major ones. I am not sure if I got the second part of your question, I am sorry, but for all of those orders, the protection application is proven first. Was that part of it?

Mr CLARK — I thought in our earlier discussion you indicated that in some instances a protection order was proven necessary before it went to the conference, but you indicated that for some conferences, whether there was a need for an order was something still outstanding at the time it got to the conference.

Ms ROBINSON — Yes, but where the order is made — whether it is at the dispute resolution conference or before — you have to have proven the protection application as well.

Mr CLARK — Yes, I suppose what I am getting at is whether there is a category of cases where it is accepted that a protection order is not needed at all, and where those cases are classified.

Ms ROBINSON — I do not know if they are reflected in this data. There are occasions when we might agree to withdraw protection applications, even once they are issued, and we can either do that without any order or we can do that with an undertaking, which is a fairly low-level order. The child would go home, the parent might undertake a condition like to do domestic violence counselling. There is no monitoring or breaching of that order available. There are cases where that occurs.

Mr McDONALD — There would not be a high number, though.

Mr CLARK — No, so I suppose it is fair to say that there are very few cases in which a child protection officer believes that a child is in need of protection where the ultimate outcome is that no order or arrangement is made at all in relation to protection of that child?

Mr McDONALD — That is correct, when it gets to this stage.

Mr CLARK — The other question I have is that you indicated there are 11 744 matters referred to dispute resolute conferences. What percentage, roughly, would that be of the total number of child protection matters coming before the court over the relevant period?

Ms ROBINSON — Of the 11 000 referred, how many of those are child protection matters?

Mr CLARK — No, does every child protection matter end up in a dispute resolution conference?

Mr McDONALD — No.

Ms ROBINSON — No. The court can refer any matter. Most matters proceed to a dispute resolution conference, whether the substantive application is a protection application or a breach of an existing child protection order. In fact in figure 2 of those attachments that I have referred to there is a breakdown of the types of matters referred to dispute resolution. The vast majority — 1877 exactly — are protection applications referred out of those 11 000-odd over that time period, from 2001 to 2007.

Mr CLARK — So are there protection applications that do not end up with a dispute resolution conference?

Ms ROBINSON — There would be, yes.

Mr McDONALD — Yes, there would.

Mr CLARK — Is that number somewhere in the data you have given us?

Ms ROBINSON — No.

The CHAIR — We can follow that up though, I guess. Just take a note of that.

Mr McDONALD — I can do some back-of-envelope calculations. I think it was around 2700 or 2600 which proceed to protective application on an annual basis, and with a total over 2001-07 of 6877, against the number that would proceed on an annual basis over six years — though that has moved. On average that may be a little under half, so between 35 and 40 per cent — that is roughly.

Mr CLARK — May be we can confirm that later.

Mr McDONALD — We will firm that up, yes.

The CHAIR — Kerryn and Kate will be in touch and we will sort that out.

Mr FOLEY — Part of the reference of the committee is at looking at ways and means that education and best practice in this area can be dealt with, and it strikes me that part of the whole cultural program that really you are taking on for the whole society here looks to how organisations can deal with child protection and refer matters to you and can go about their business, if you like, in a best practice, child-safe kind of way. Do you see any role for your Department in dealing with that, either directly or with partners or agencies in the private or public sector — dealing with how you go about educating people as to what the best practice in this whole area is so as to avoid the need for this whole program to grind through?

Mr McDONALD — Yes; a good question. What part of the reforms to the Children, Youth and Families Act 2005 indicated was the development of a whole new role for family services across Victoria. If I can answer this way, and then I will talk about the reason I am going to answer this way. What that creates is a range of 27 family service platforms across the state that attract all the family services in those local areas, plus other professionals, and which are now able to receive referrals from the child protection notification end to try to

respond to those families and those children who are at risk or vulnerable, that do not require crossing the threshold into the statutory system. Prior to these child-first, as they are called, platforms being created, basically the child protection program was assessing these families and it was either a 'no' or 'go' — that is, either bring them into the system with some way of providing some care and protection for the child and service to the family, or actually saying, 'No you do not cross the threshold, here are a few numbers'. I am just paraphrasing. I mean some referral, but that is about it.

Now we have established an integrated model of what they call child-first platforms made up of family services where information about the case, about the family, that does not cross the threshold and need statutory intervention, can be transferred across directly into these child service, child-first family service agencies for them to assess and directly refer into their family services. This is all about trying to prevent the ramping up of statutory intervention and to support families and the children in whatever issue, whether it is domestic, emotional or other shortfall in the family, that seems to be requiring some sort of assistance.

This is possibly why — and probably why, rather than possibly why — Victoria's statutory notifications have remained reasonably level and stable, by investing quite heavily up front in the Family Court services. You may have heard the expression 'family service innovations'. In answering your question about practice and service delivery to these families, we think the child-first platform, which we are halfway through rolling out across the state, will deliver that type of service.

In relation to education, and wider education about the care of the child, the protection of the child and the best interests of the child, I think that the challenge for us is to communicate to the community about what is in the best interests of the child, to make the right assessments and to bring the right services to these families to prevent them coming in.

There will always be a role for child protection to take the statutory end of those high-risk, serious abuse, serious chronic neglect cases — all those things. But I think the most significant part of the reform within the Children, Youth and Families Act is the establishment of these child-first platforms, where vulnerable and at-risk families can be referred to and a support structure put around them.

The flow-on effect is that we are hoping not to see as many of those families and referrals come in through the child protection system. Secondly, I think it brings services quicker and up to the front end to those families without them getting into such a crisis further down, and we are trying to bring them in when we are in the middle of statutory intervention. Does that answer your question?

Mr FOLEY — It does, yes.

The CHAIR — We are nearly out of time, but I would like to touch on something going back to the juvenile justice group conferencing program, to one of the things that we did not pick up before. In the evidence we have gathered it has been brought to our attention that there is a need for increased post-conference follow-up. At least one of the agencies which you fund has said to us that there is a problem there, and that one of the things it put that down to was a lack of resources to actually follow that through in a way that it would like to and it thinks that it deserves. Could you just talk about that bit please?

Ms NOBLETT — I am happy to talk to that. The model was deliberately an intervention that was time limited and, if you like, an episode in the young person's life, designed to get the young person to take responsibility for their behaviour, even in modest ways. Notwithstanding that the young person might have high needs, this intersection with the criminal justice system was about having a direct impact on their reoffending.

It was never our intention to draw the young person closer to the criminal justice system by either the supervision of outcome plans, or affording them other avenues through which they were supervised, especially if the outcome was good behaviour bonds, or things of that kind, which are not in any way supervisory orders. In circumstances where there are supervisory orders, then the role of support and case management is managed through these justice programs, so there are youth justice social workers who would provide supervision to young people and case management. Embedded in that is an assessment framework, a planning framework and an ongoing referral process. That is the rationale, if you like, for a model of not following through on outcome plans. If it was deemed that an outcome plan required that level of intervention, then it was our proposition that the court would order a supervisory order, that we were not having a bet each way, and we certainly did not want to see outcome plans necessarily embedded into supervisory orders because we saw them as much more modest.

There was a time when we had quite a lot of dialogue with the conveners. It was earlier in the development of the legislation and was about whether that was warranted. There is research in the youth justice territory that says you can over-intervene with young people who are in contact with the criminal justice system at this early point.

Mr FOLEY — So it is a conscious policy decision that says if you go to that intensive level, it is really a matter for the court rather than for the service delivery here.

Ms NOBLETT — Yes, alongside a notion that the outcome plan was entirely the responsibility of the young person, hence the restorative nature of it, and if a plan was developed that was more ambitious than a young person could actually fulfil then it defeated the purpose. On occasion we have heard people say that the young person needs support to do this, this and this, and we say, 'How is it their plan?'.

The CHAIR — The clear impression I got from someone who was here — because we have had a bit of a movable feast today — was that the agency did understand that it was part of its role to do this. Also, I suppose more broadly, it is worth saying that right through these hearings there has been a sense that if the victim of an offence does not have some confidence that the plan will be fulfilled, then it diminishes the whole exercise for them and the quality of that experience, and so it has been a matter that has been raised off and on. But you are saying, just to follow Martin's point, that, yes, you agree with that in principle but where you part ways is that it is not really part of what the agency should be doing, following those up, that is really part of the justice system.

Ms NOBLETT — That is correct. We have on every occasion encouraged young people to bring support people to the conference where additional support is required, and one would hope that on occasion if that is not family, that there be adequate referrals to, if you like, more universal services available to young people in the community, as opposed to those services only afforded to them through the criminal justice system. After the good behaviour bond, there are many young people we do not see again.

The CHAIR — This is fresh to me so I would have to think about it later on, but just while we are all here can I tell you that we have also had people raise with us the view that the whole restorative justice exercise can be perceived in the community as being a soft option. One of the ways that can be validated is by outcome plans not being followed through. If the perception starts gathering that they do the plan and then people kind of drift off and it falls through the cracks of, 'It is not my job, it is their job', then how are we guarding against that? How do we make sure that the community — part of what we are all projecting in the community — has confidence that, yes, an outcome plan is serious business, it is not a soft option, it has got to be followed through, when the agency is not responsible?

Ms NOBLETT — I suppose the emphasis for the youth justice group conference program in Victoria has been on the process. The feedback that we have received from young people is that they have been on orders before, they have been through programs before, but in fact developing any kind of direct empathy with the victim was one of the most persuasive things in them changing their behaviour. For us the emphasis was on the process and the young person being authentic within that process, because I think we could have a lot of young people signing up to a whole range of outcome plans and promising the court that they will abide by this condition and that condition, which we may not see later.

The CHAIR — Yes, but being authentic is doing what you undertake to do for the victim in that conference. If you are not doing it then how are you authentic?

Ms NOBLETT — It is very difficult for young people to anticipate large distances ahead of schedule. They will make an undertaking and have all the best intentions that, 'Yes, I will refrain from drug use', and, 'Yes, I will attend drug and alcohol treatment', without anticipating the longevity of that commitment. Whereas the restorative approach probably has much more of an impact, such as, 'I will write you a letter of apology', 'I will clean your car', 'I will clean your fence'. By so doing, this sort of connection and reparation is immediate and has a direct impact. They are making a promise that is immediately tangible. That is the philosophical aspect.

The CHAIR — I was mostly talking about the restorative part.

Ms NOBLETT — I think perhaps we could do a little more to track outcome plans.

Mr McDONALD — I think you raise an interesting point, and this is possibly the intention of keeping the daylight between the supervision order and the probation order, and what is required in that supervision order; and

then the book-ending or the finishing-off work about making sure that those decisions and outcomes are either noted or completed or somehow monitored. It is an interesting one in trying to balance, I suppose, and not only balance, but focus on the actual process, rather than the ongoing monitoring and outcome. I can quite appreciate some comments coming to the committee in relation to this area, and certainly that is something of a reflection on us too in relation to that finishing off, I suppose, and of the community expectation of how we know. It could be said that they could have just walked in, sat down, said yes to everything, and walked out and laughed.

I can understand that view coming forward, and I think it probably does require some thinking in relation to the processes of the ticking-off of a completion, but it is against the balance, I suppose, or against the intention of not wanting to move them into some sort of juvenile justice monitoring of a particular order, where we are trying to keep that daylight. You have raised some good points.

Ms NOBLETT — There is data in your packs in relation to the sorts of outcomes for young people going to that. At figure 6 there are the sorts of outcomes, and as you can see they are modest. There are verbal apologies, written apologies, voluntary work and financial restitution. Again, even with the financial restitution the young person can attend and say, ‘I will give you $200’, and mum or dad could provide the $200 and the rest. None of that is particularly helpful to the young person’s understanding of reparation. The bulk have been around written apologies. Literacy is a problem for many of the young people who go through the youth justice program, so that actually often requires some level of assistance.

The other piece of data that is on the next page is figure 7, which talks about where we have started to monitor without saying that we expect you to come to the end point, where it describes the outcome plan completion, and for 68 per cent, yes was the outcome, and there is a variety there of other possibilities. So for ‘yes’, ‘partially’ and ‘in progress’, we were relatively comfortable with that. ‘Conferences cancelled’ is one, and ‘not known’ is the other, which was only 2 per cent for the period that we have been monitoring. For 3 per cent of them it is ‘no’.

The CHAIR — We are out of time. Thank you very much for coming. this is a huge work in progress and there are lots of bits to it, but this has been very useful. Thank you for all the information you have provided. I am sure that Kerryn and Kate will be in contact with you again for various items they need clarification on. We will make sure that Robert gets the data that he was asking for before. Thank you.

Committee adjourned.