

Appendix 8.1

Family decision making and mediation models

Mediation

The Care and Protection of Children Act 2007 provides for the use of a mediation conference, both as an early intervention alternative to statutory intervention (Section 49) and as a court-ordered mediation, after Northern Territory Families and Children (NTFC) has filed an application for a protection order (Section 127).

Under Section 49, NTFC may arrange for a mediation conference to be convened for a child if concerns have been raised about the wellbeing of the child, when NTFC reasonably believes the conference may address those concerns, and the parents of the child are willing to participate in the conference. NTFC is not required to have taken any other action for the child.

The conference may be convened for the purpose of establishing the circumstances giving rise to those concerns, for reviewing an arrangement that has been made for the care of the child, for making recommendations about the care of the child, or for arriving at an agreement on the best means of safeguarding the wellbeing of the child.

The Chief Executive Officer (CEO) must appoint a person (the convenor) who is approved by the parents of the child and has the qualifications or experience prescribed by regulation to convene the conference. The convenor may invite the parents and other persons to attend the conference as the convenor considers appropriate.

The regulations may make any provision for the conference, including any procedural and reporting requirements for the conference, the appointment of a person to represent the interests of the child in the conference, the making of any agreement arising from the conference; or the powers and functions of the convenor.

The provisions under Section 127 for a court-ordered mediation after NTFC has filed an application for a protection order are essentially the same as for Section 47 except that the order can be made without the consent of the parents and a person required to attend the conference can be represented.

The NTFC Policy and Procedures Manual notes that:

A mediation conference is most likely to be effective when used as an early intervention option. A voluntary mediation conference may be organised to marshal the helping resources of the family group as an alternative to an application to a protection order. It can also be very useful in identifying family placement options when organising a temporary placement arrangement.¹¹⁸⁵

The Inquiry was informed that no regulation facilitating the introduction of court-ordered mediation conferences has been proclaimed.

¹¹⁸⁵ Northern Territory Families and Children, 2009, *NTFC Care and Protection Policy and Procedures Manual, Version 2.0*, Northern Territory Government, Darwin, 12.1.2.

Family Group Conferences

Family group conferences are based on the principle that families (extended and friends) have a right to be involved in significant decisions about their children and that involving them in the problem solving and implementation process will result in better outcomes for their children. Family group conferences have been used in child protection in Australia, the United Kingdom, Ireland, the United States and New Zealand.

In New Zealand, child protection legislation requires a family group conference to be convened whenever an investigation indicates that statutory intervention is warranted. The conference has the power to decide if the child is in need of care and protection and how the need can be best addressed. In some circumstances the decisions of the conference are given the same status as court decisions. Harris¹¹⁸⁶ reports there is debate in New Zealand whether such a 'high tariff' intervention should only be used where there are significant concerns and that they should be used earlier in the child protection process.

All Australian states and territories have implemented or conducted trials of some form of family group conferencing based, to a greater or less extent, on the New Zealand model. Some jurisdictions have stopped using them (New South Wales and Western Australia), some have more recently introduced them or are increasing their use (Tasmania, Queensland, Victoria and the Northern Territory), while use in the other jurisdictions has been stable.¹¹⁸⁷ Where conferencing is most used, legislation makes specific provision for its use.¹¹⁸⁸ In some circumstances the legislation requires a conference to be convened for example, where a significant decision is to be made about an Aboriginal child – in particular decisions about placement.¹¹⁸⁹ Other variations occur in relation to the affiliation of facilitators – from within the Department or independent, or a combination of both as in Victoria – when and why conferences are used, and the status of decisions made by the conference.

Evidence

Harris reports that studies on evaluation show that conferences lead to greater feelings of empowerment by families, are usually able to produce a plan that is acceptable, mobilise greater formal and informal support for families, and would seem to increase the safety of children and other family members where violence is a concern.¹¹⁹⁰

Huntsman has found that while there is a lack of research evidence testing family group conferencing against other more traditional types of decision-making, there has been a steady accumulation of evidence of some positive aspects including high consumer satisfaction with the process; generally positive attitudes to the process among workers

1186 N Harris, 2008, 'Family group conferencing in Australia 15 years on', *Child Abuse Prevention Issues* 27, <http://www.aifs.gov.au/nch/pubs/issues/issues27/issues27.html>.

1187 *ibid.*

1188 South Australia, Queensland and Tasmania.

1189 Northern Territory Families and Children, *Policy and Procedures Manual, Version 2.0*, 12.1.2.

1190 N Harris, 2008, 'Family group conferencing in Australia 15 years on', *Child Abuse Prevention Issues* 27, <http://www.aifs.gov.au/nch/pubs/issues/issues27/issues27.html>.

who have experienced it; success in devising plans agreed to by family members and meeting the 'bottom line' requirements of conferences; and a higher rate of child placement within the extended family when compared with other initiatives.¹¹⁹¹

While less strong, the weight of evidence also points to improvement in communication within families subsequent to conferencing, and improved perception of child protection services and workers among family members due to family group conferencing.

There are three main problems identified with the family group conferencing process. These are:

- Confidentiality – ensuring confidentiality of sensitive information and managing disclosure during conferences are difficult issues
- Clarity of procedures – there is often confusion, or a lack of clarity regarding responsibility for deciding on, calling for and convening a conference; for determining who should attend; and arranging follow-up, monitoring the outcomes of a conference, and reviewing implementation of a conference plan
- Staff turnover – even when procedures are developed and responsibilities allocated, changes in staff often result in disruptions and lack of follow-up.¹¹⁹²

Uniting Care Burnside's Family Group Conferencing Pilot

This pilot, conducted from 1996 to 1999 involved matters that were post court or non-court matters. The issues considered were about placements for the child, contact between the child and family members and the supports required to maintain or restore the child to the family.¹¹⁹³

The Department of Community Services (DoCS) submitted that that outcomes of the pilot demonstrated improved relationships between families and DoCS; better relationships between family members; an enhanced capacity to reach agreement; and a reduced risk to children and children remaining at home in about two thirds of cases.¹¹⁹⁴

Family Group Conferences in England¹¹⁹⁵

If a child or young person has been identified as in need of protection, local authority Children's Services are required to convene and run **child protection case conferences** and are responsible for producing a child protection plan. Family members may attend, but the professionals are responsible for making decisions and drawing up the plan.

Family group conferences may be run alongside child protection case conferences to allow the wider family group a greater input into the child protection plan. The aim of the

1191 NSW Department of Community Services, 2006, *Family Group Conferencing in a child welfare context, Literature Review*, NSW Department of Community Services, Sydney, http://www.dhcs.act.gov.au/__data/assets/pdf_file/0006/48750/Literature_review_on_family_Group_Conferencing.pdf.

1192 *ibid.*

1193 J Wood, 2008, *Report of the Special Commission of Inquiry into child protection services in NSW*, State of NSW through the Special Commission of Inquiry into Child Protection Services in NSW, Sydney, p.486.

1194 *ibid.*

1195 NSPCC, 2009, 'Family group conferences in the child protection process', http://www.nspcc.org.uk/Inform/research/questions/family_group_conferences_in_the_child_protection_process_wda68725.html.

family group conference is to support families to find their own solutions to problems: the family members are the decision-makers rather than the professionals; the 'family' is the primary planning group.

Not all Children's Services departments run or fund family group conferences as part of their child protection procedures, and they do not replace child protection case conferences.

An **independent coordinator** (usually a professional recruited from local statutory and voluntary service communities) negotiates attendance and informs participants about the family group conference process. The coordinator has a duty to identify and address issues of race, gender and culture and to respond positively to any specific needs identified by the family. The family group conference is held in the first language of the family.

Only those professionals directly involved, or holding significant information, attend the conference. Information sharing takes place at the start of the meeting. The role of professionals is to share information and knowledge about the child or young person and about services, resources and support that may be available. Families must be given the fullest information possible in order that they can make decisions that take account of professional concerns. This part of the meeting is chaired by the coordinator.

Unless the family requests a particular professional to be present, they must then have private decision-making and planning time. At this stage of the meeting, the family must agree on:

- a plan that meets the needs of the child/young person
- contingency plans needed if the original plan is unsuccessful
- how to monitor and review the plan

The coordinator is available during this time if the family needs clarification or further information. Once the family has agreed on the plan and resources have been negotiated, it is passed back to the referrer, i.e. the professional who originally referred the case to the family group conferencing service.

Even if there is need for further agreement or negotiation of resources outside of the meeting, the plan should be agreed in principle by the referrer. The only reason for not agreeing the plan is if it puts the child at risk of significant harm. Timescales and responsibility for specific tasks are agreed at this point. The outcome of the plan is dependent on the family and the professionals working together, and keeping each other informed about progress and problems.¹¹⁹⁶

When a child protection matter is taken to Court, the majority go to the Family Proceedings Court and are presided over by a panel of three Magistrates who may or may not be legally qualified. More complex cases may be transferred to a county court of high court and be heard by a judge.¹¹⁹⁷

1196 NSPCC, 2009, 'Family group conferences in the child protection process', http://www.nspcc.org.uk/Inform/research/questions/family_group_conferences_in_the_child_protection_process_wda68725.html.

1197 *ibid.*

Family group conferencing in the Northern Territory

The Inquiry has been informed that during 2008 and 2009 NTFC explored best practice models to use for the mediation conference in the Northern Territory taking into account the client demographics, expected demand and service viability. It recommended a model of family group conferencing model based on the New Zealand model.

The model is centred on family and professional partnerships in child protection decision making. It is child inclusive. An independent person convenes the conference and it builds on people's strengths and resources within the family and community. Thus it is an intervention that mobilises individual, family and community strengths toward better outcomes for children. Family group conferencing also has the potential to address other significant issues for the care and protection system. For instance, it can reduce the workload for NTFC staff by providing additional resources to support the facilitation of family involvement and the development of case plans. It can also reduce the workload of NTFC staff by reducing the number of cases that proceed to court. [The Victorian Ombudsman noted that only 7 percent of reports received by the child protection agency will progress to court, however child protection staff reported spending 50 percent of their time undertaking court related activities].¹¹⁹⁸ Family group conferencing also has the potential to reduce the number of children coming into care. So while it is a relatively intensive process, it has potential to significantly impact on cost-drivers in care and protection.

The program was costed to establish a NT-wide Mediation Conference Service and a budget request was put forward as part of NTFC's internal 2009-10 budget process. No budget allocation was made.

A thirty month trial of a family group conferencing model focussing on Aboriginal families in Alice Springs has commenced with funding from the Australian Government through the Alice Springs Transformation Plan. The current funding per annum of this service in Alice Springs is \$361,750.¹¹⁹⁹

Scotland's Children's Hearings System

The Children's Hearings System in Scotland provides a safety net for vulnerable children, and works with partner agencies who deliver tailored solutions to meet the needs of the individuals involved and help to build stronger families and safer communities.

Reports or referrals are made to a Children's Reporter with most reports coming from police, schools or social workers. The Reporter is an employee of the Scottish Children's Reporter Administration who investigates the report to determine if there is a need for statutory intervention and if there is, refer the matter to a Children's Hearing.

Each Child's Hearing comprises three Panel Members, all trained volunteers from the local community – a mix of male and female and of different ages and expertise. The child and family or carers attend as do a social worker. The role of the Reporter is to attend the Hearing to support fair process but he/she does not take part in the Panel's deliberation and decision making. Decisions are made openly during the Hearing.

The most common outcome from a Children's Hearing is a supervision order although

1198 NSPCC, 'Family group conferences in the child protection process'.

1199 Submission: NTFC Strategic Projects.

emergency care and protection orders can be made. Local authorities have a statutory obligation to implement the decisions made by the Children's Hearing.

Children's Hearings can deal with both child protection matters and cases where the child or young person has committed an offence.

NSW Children's Court Care Circles for Aboriginal children

A care circle is an alternative way of resolving care matters involving an Aboriginal child or young person through increased participation of their family and community in their future care arrangements.

A care circle can be activated by a Magistrate after it has been established that an Aboriginal child or young person is in need of care and protection. Care circles are confidential and voluntary - all parties must agree to participate.

The following people are involved in a care circle:

- Child or young person (if deemed appropriate by the child's legal representative and the magistrate)
- Child's parents and their lawyers
- Three respected Aboriginal community members (appointed by the Minister and trained in the operation of Care Circles, the legislation and the concept of the paramountcy of the safety, welfare and wellbeing of the child)
- Department caseworker/casework manager and legal officer
- Magistrate
- Care Circle project officer
- Other family members and advocates (at discretion of Magistrate).

Care circles provide input into the following:

If there is to be reunification then what interim arrangements there should be for the care of the child; and what services / supports can be made available to the family, or

If there is to be no reunification, then where the child should live; what contact arrangements should be put in place and alternative family placement.

When a matter is set down for referral by the Magistrate to a Care Circle, a summary of why the child is in need of care and protection and the issues to be considered by the Care Circle will be prepared and agreed to by all parties.¹²⁰⁰

After the first Care Circle conference, the DoCS caseworker will prepare a care plan based on the discussion and outcomes. The second conference will discuss this plan and decide on what court orders are appropriate for the care of the child. If agreement cannot be reached the matter is referred back to the court to be determined in the usual way.¹²⁰¹

1200 Attorney General's Department of NSW & NSW Department of Community Services, 2008, *Care Circles: An alternative court process for Aboriginal children at risk*, NSW Government, Sydney.

1201 *ibid.*

Evaluation of Care Circles

The evaluation found that the Care Circle pilot is a valuable program that provides an appropriate avenue for community input and community involvement in decision making about Aboriginal children and young people. It was strongly felt that these opportunities are not available through the traditional court process, and result in greater level of satisfaction and acceptance of decisions relating to Aboriginal children and young people, and gives parents a greater sense of ownership and control in identifying what is in the best interests of their child.

It is important to note that given the traumatic associations that many Aboriginal families have around the removal of children, increased confidence by the Aboriginal community in the care process is likely to be a slow process. Nevertheless, the Care Circle pilot was viewed as a 'step in the right direction'.¹²⁰²

The Inquiry is of the view that there are a number of models of Alternative Dispute Resolution (ADR) (or variants of models) that are suitable for use both before and during care proceedings. No one model of ADR is proposed. The Inquiry is of the view that it would be prudent to adopt a flexible approach taking into account the nature of the issues to be considered, the circumstances of the child and his or her family, the community setting and the resources available is recommended.

The Inquiry is of the view that the crucial question of determining whether or not a child is in need of protection is not an issue for consideration by family groups. That is a matter for the Court to determine. However, there are a range of issues that could be considered by family groups in a structured ADR setting. These include:

- Placement plans
- Contact arrangements
- Treatment interventions
- Long term care issues
- Determination of the timing or readiness for returning a child to the home
- Determination of when to discontinue a supervision direction
- The nature and extent of a parent's involvement
- Issues of parent/child conflict
- Lack of, or poor, communication between a worker and parents due to hostility
- Negotiation of length of care and conditions of return
- Foster carer/agency/parent issues
- Cultural considerations.

It is essential that ADR programs, be they on a trial or roll-out basis be fully funded and that training be provided for ADR convenors and others involved in establishing and facilitating ADR models.

1202 Cultural and Indigenous Research Centre Australia (CIRCA), 2010, *Evaluation of the Care Circle Pilot*, CIRCA, Sydney.