

New Model Conferences

Evaluation Report

For the Courts and Tribunal Unit, Department of Justice

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Acronyms

ADR	Alternative Dispute Resolution
CPLO	Child Protection Litigation Officer
CPPTIP	Child Protection Proceedings Taskforce Implementation Project
DHS	Department of Human Services
DRCs	Dispute Resolution Conferences
KEQs	Key Evaluation Questions
NMCs	New Model Conferences
VLA	Victoria Legal Aid

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Executive Summary

This evaluation report focuses on the implementation of New Model Conference (NMCs) in the Children's Court during the period from January to October 2011. The report uses monitoring data collected by the Conference Unit and feedback from key stakeholders to answer key evaluation questions.

The introduction of NMCs aimed to promote improved outcomes for children and families and reduce the length of the court process in matters in the Family Division of the Children's Court. Driving this initiative are the recommendations coming out of the Child Protection Proceedings Taskforce to reduce the adversarial nature of the court system and the time people spend in the court, and to provide better support and preparation for child protection workers in their interactions with the court system.

NMCs are structured around an eight step model where an experienced, trained convenor guides parties through a process of conciliation with a strong focus on family engagement with the Department of Human Services (DHS) and with legal representatives playing a support role. The NMCs involves a greater amount of initial preparation by parties including the exchange of relevant documents in a timely manner so that all parties are clear on the issues involved in the case before proceeding to the NMC. This is supported by an intake process that also aims to inform and engage families to the greatest extent possible to try and ensure they are prepared for the NMCs.

The key evaluation questions that this evaluation has sought to answer are:

- What was the impact of preparation processes on the conduct of the NMCs?
- To what extent did the parties shift into the new roles required within the NMCs?
- To what extent was procedural fairness achieved?
- How effective were the NMCs at achieving intended outcomes?
- What was the impact of the NMCs on the efficiency of the Children's Court?
- What are the identified issues for expanding the program?

Key findings

The document exchange process is beneficial to legal representatives and DHS staff when the information in the documents is up-to-date and thorough and the exchange happens on time (this was the case in 58% of NMCs). When this occurs, the process contributes greater clarity from which to initiate discussions and undertake informed negotiations in the NMCs.

The eight step model is working well and the skills of the convenors are valued in what is recognised as a challenging role. The ability of convenors to be able to comprehensively prepare beforehand by accessing relevant case files and histories enables them to facilitate the NMC on a solid body of information. The Conference Unit staff work well as a team and have adapted well to the challenges encountered in improving intake processes and the NMCs are adapting to the impediments faced in terms of the larger scale roll out of the NMCs.

The NMCs provide an important opportunity for families to increase their understanding and clarity around the issues being discussed and enhance their capacity to better engage in the processes at (and leading up to) the NMCs. This contributes to reaching meaningful agreements that are more clearly understood by families. This has important consequences for improving **procedural fairness** as families are given more time and encouragement to participate with feedback about families indicating that all were encouraged to participate and many did so to the extent that they wished; they were able to have their say and be heard.

Stakeholders in the NMCs have shifted into the new roles required within the NMCs (i.e. DHS staff, CPLOs, legal representatives, clients etc.). **The presence of Child Protection Litigation Officers (CPLOs)** for the duration of the NMCs (where possible) has made a clear contribution to reaching agreements. Their support is valued by DHS staff and their contribution recognised by legal representatives. Families appear to be welcoming the change in environment and opportunity to play a more active role in discussing the relevant issues of the case and seeking agreements. DHS staff and legal representatives have, in general, responded positively to the changes brought about by the introduction of the NMCs and are adapting to their new roles.

Overall, the NMCs provide a better environment for negotiations to take place with more meaningful participation from all parties involved. As a result, positive agreements are being reached. Stakeholders in general were positive about the amount of time allocated for the NMCs with the average duration of the NMC being approximately two and a half hours.

In terms of **outcomes**, the NMCs have achieved full settlements in 41% of cases, reached a partial settlement (i.e. interim settlement or case adjourned for mention/ NMC) in 41% of cases and 18% were booked off for a contest after the NMC process. Overall, the NMCs are effective at achieving intended outcomes as there is confidence amongst stakeholders that the NMCs can be effective at achieving better and more durable outcomes.

Key Challenges

Document exchange between the parties is not occurring on a timely basis in too many cases (42% of NMCs). When information submitted is lacking in detail or not up-to-date, the information exchanged is potentially of limited value especially where conditions or positions may have changed between the time of booking the NMC and holding the NMC. The process (including structure of forms and content requested) needs to be re-assessed to ensure the process is making the contribution to the preparation of parties originally envisaged.

Engaging families in the lead up to the NMC continues to present challenges for the Conference Unit and they continue to explore new approaches to facilitating contact and preparing clients (e.g. SMS-ing reminders to families). The level of engagement achieved through this process can also potentially impact on cancellation rates and engagement levels in the NMCs. While external factors limit the impact the Conference Unit can have on all of the challenges identified in this report, ongoing improvements and adaptations to the NMCs and preparatory processes will need to continue to both contribute to ongoing learning for the courts and the Conference Unit as well as inform further roll out of the NMCs.

Cancellations are a clear concern and a drain on resources (especially those that cancel on the day). 38% of NMCs listed were cancelled either before the scheduled or on the day of the NMC but during 2011 they are trending downwards. The main reasons given for cancellations were 'party unavailable' or 'party ill' (for NMCs cancelled before the scheduled day) and 'parties failing to attend' (for those cancelled on the day). While many stakeholders recognise that this is an issue relating to this particular client group and also in other courts, further discussions between all key stakeholders are needed to develop initiatives to address what is a complex and challenging issue and which ultimately leads to an ineffective use of the court's time and resources.

The appropriateness of some cases coming to NMCs was questioned in terms of both how ready the case was for an NMC and what potential existed for some sort of agreement to be reached. Further discussion of the timing of cases is needed around the current 'trigger point' at the second mention for NMCs and also how cases progress through DHS processes to ensure they are not going to NMCs too early. 14% of cases were referred to NMCs at the first mention with 24% at the second, 19% at the third and 13.5% at the fourth mention. But cases referred to NMCs at the third or fourth mention had the lowest rates of NMCs being booked off to contest (14% and 6% respectively) while those booked at the first or second mention had higher rates of being booked off to contest (28% and 18% respectively).

The eight step model that structures the NMC conciliation process was felt to require further flexibility by some, both to respond to the unique characteristics of cases and issues to be addressed and to ensure discussions take place in a balanced way focusing on the key issues of concern.

This leads to another challenge and that is continuing to improve the NMC model to ensure that it is **responsive to the needs of particular client groups** such as indigenous clients. 10% of all clients identified as Aboriginal and Torres Strait Islander (3% from Footscray and 17% from Preston regions). Additionally, small changes to the environment of the NMC could also contribute to putting family participants more at ease and enhancing their contribution in productive ways.

The presence of CPLOs for the duration of most NMCs will be a challenge to maintain and will depend on the extent of the workload increase once the NMCs are further rolled out in the metropolitan region and the resources available to DHS.

Finally, a key challenge remains in terms of **data collection and family feedback**. Further discussions will be needed to ensure that resources available for data collection and the focus of that data collection are balanced. This will be particularly relevant once further roll out of the NMCs take place and the number of NMCs increases. Given the difficulties encountered in obtaining feedback directly from families, the level of priority and resources available to undertake this process will need to be reconsidered for future evaluations and additional input from DHS and legal practitioners would be highly valued.

Recommendations

Recommendation #1: Document exchange forms and processes need to be reviewed to ensure that the information exchanged is relevant and that the documents are exchanged on time.

Recommendation #2: Diverse initiatives are required to reduce the level of cancellations as there is no one reason why this is taking place – this includes focusing on the preparation processes (by legal practitioners and the Conference Unit), the timing of the case being referred to an NMC; and initiatives that can be undertaken on the day (e.g. reminder calls, transport, childcare assistance etc.).

Recommendation #3: The second mention ‘trigger point’ should be reviewed to ensure that a balance is achieved between the readiness of the case and DHS workers to go to an NMC and the potential for reaching either a full or partial agreement. It may be that the third mention is a better option at this stage or a greater period of time is needed between referring and holding the NMC.

Recommendation #4: A holistic approach is needed to review and improve the NMC program given the inter-connectedness of the challenges raised and the number of stakeholders involved.

Recommendation #5: Continuing to evolve the NMC process will contribute to more efficient and effective use of time - the experience of the Conference Unit has built up a body of important learnings to improve the NMCs and facilitate a smoother roll out of the NMCs across the metropolitan region.

Recommendation #6: CPLO staff present during NMCs should be a best practice goal as their contribution for the duration of NMCs has been highly valued by other stakeholders and they have adapted to their enhanced role with great insight and enthusiasm.

Recommendation #7: Enhancing NMCs for Aboriginal and Torres Strait Islander parties should be considered especially given the high percentage of clients coming from the Preston region.

Recommendation #8: The Conference Unit will require further support for data collection processes and intake in order to balance relevant data collection and processes with available resources.

Recommendation #9: Family feedback remains a challenge and further options will need to be explored if these views are to be captured in the future.

Section One: Introduction

This report identifies the findings of the second stage of the evaluation of the New Model Conferences (NMCs) component of the Child Protection Proceedings Taskforce Implementation Project (CPPTIP) undertaken between January and November 2011.

1.1 Scope of this report

This evaluation report focuses on the NMCs during 2011 and uses monitoring data collected by the Conference Unit and feedback from key stakeholders to answer the key evaluation questions. The process for this evaluation has been guided by the Evaluation Plan developed in 2010 through a planning workshop with key stakeholders. Given the delays experienced in the planned roll out of the NMCs, this report takes the approach that the NMCs are still in an (extended) pilot process. As such, the learnings, achievements and challenges discussed here will feed into further improvements to the model in its current location and as it rolls out across the metropolitan area.

The structure of this report provides an Executive Summary, an overview of the methodology employed, findings from the analysis of the data collected by the Conference Unit, findings from the qualitative feedback from stakeholders (including a detailed discussion of the issues and challenges to emerge), and recommendations.

1.2 Overview of the New Model Conferences

The introduction of NMCs in the Children's Court of Victoria aims to promote improved outcomes for children and families and reduce the length of the court process in matters in the Family Division of the Children's Court. The NMCs were originally planned to be phased in across Melbourne over a 12 month period, with the first phase commencing in August 2010. Driving this initiative are the recommendations coming out of the Child Protection Proceedings Taskforce to reduce the adversarial nature of the court system and the time people spend in the court, and to provide better support and preparation for child protection workers in their interactions with the court system.

This has now been pushed back by a number of months due to unforeseen delays in the Conference Unit in the Children's Court in the Melbourne CBD being able to relocate off site (away from the Children's Court). These delays are due to reasons outside the control of the Unit or the Children's Court. The first phase of the roll-out of the NMCs focused on North-West region - the Footscray office in August 2010 and the Preston office joined this process in early 2011. The court currently employs four convenors (including the Manager) and an intake officer. Recruitment of a further two convenors has recently been finalised in preparation for further roll out across metropolitan regions in 2012.

The NMC Model revolves around an eight step model guiding the NMC process and involves a greater deal of initial preparation (the first step of that process) by parties including the exchange of relevant documents and information in a timely manner so that all parties are clear on the issues involved in the case before proceeding to the NMC. This is supported by an intake process that also aims to inform and engage families to the greatest extent possible to try and ensure they are prepared for the NMCs. Where possible or suitable, the NMCs take place outside the court environment with a convenor guiding the discussions. The convenor is a trained mediator that has access to the key documents of the case and guides the parties through the eight steps and to an agreed outcome that is in the best interests of the child or children. Lawyers are present for families (and often for DHS staff) but the aim of the NMCs is that they play a secondary role so families and

workers have greater scope to discuss and clarify issues and negotiate agreements (informed by legal advice).

The following principles underpin all aspects of the NMC model from the development of the broader goals to the implementation of the activities. They are not linked to a particular activity or outcome, but rather guide and inform every step of the process. The principles are: (i) a transferable NMC model; (ii) procedural fairness; (iii) children’s best interests are at the heart of the process; (iv) the process is more inclusive of children and parents; and (v) NMCs occur as soon as practicable in the court process.

1.3 The evaluation methodology

The NMCs present both challenges and opportunities in evaluation. As a result of the two-phased approach, the Department of Justice and the Children’s Court adopted for the rollout of the NMC model, the Monitoring and Evaluation Plan also employed a two-phased approach.

1.3.1 Monitoring and Evaluation Plan

The Monitoring and Evaluation Plan was developed through a participatory workshop process in order to ensure its relevance and appropriateness for the evaluation audience. A Program Logic for the NMCs was developed using documentation provided by the Department of Justice and the Children's Court and subsequently refined during the workshop with key stakeholders (see Appendix One). This updated logic model was then used to generate some initial evaluation questions. Building on this input the program logic was finalised by the evaluation team and used to create a final set of key evaluation questions (KEQs) and sub-evaluation questions (see Appendix Two). These key evaluation questions are listed below:

1. What was the impact of preparation processes on the conduct of the NMCs?
2. To what extent did the parties shift into the new roles required within the NMCs?
3. To what extent was procedural fairness achieved?
4. How effective were the NMCs at achieving intended outcomes?
5. What was the impact of the NMCs on the efficiency of the Children's Court?
6. What are the identified issues for expanding the program?

1.3.2 Data collection methods

The evaluation of the NMC model focused on two main areas of data collection and analysis:

- data collected by the Conference Unit at intake and at the NMCs that was inputted into a database set up at the beginning of 2011 – this data has been analysed in this report and the findings can be found in Section Two.
- data collected by Clear Horizon from semi-structured interviews and focus groups conducted with stakeholders during September and October of 2011 (i.e. lawyers, DHS staff, CPLOs, Conferences Unit, Magistrates, ADR Working Group). This data has been analysed and the key themes and issues listed and discussed in Section Three.

1.3.3 Quantitative data collected by the Conference Unit

Data collected by the Intake Officer and Convenor was analysed and will provide the basis upon which the data collection process is designed in the rollout phase. The topics of data collection are listed below in Table 1. This data has been analysed for the period January 2011 to October 2011 (see Appendix Six for a summary of the data). The database was developed by Clear Horizon and the Conference Unit to ensure relevant data was documented during the 2011 period to assist in the learnings of the Conference Unit and to provide important data for reporting requirements.

Table 1: Data collected by the Intake Officer and Convenor

Intake officer data	Convenor data
Date	Date
Case Code	Case code
Region	Application type
Joint/ shuttle	Grounds
Venue	Prior mentions
Cancelled? Why? Rebooked?	Venue
Eligibility assessment (time)	Format change?
Risk assessment (time)	Cancellation? Why?
Other intake (time)	Duration 1
Documents not submitted? Who?	Duration 2 (if app.)
Documents late? Who?	On time? If late, how late?
No. of family members interviewed	Late attendees? Who?
Aboriginal and Torres Strait Islander	Other attendees? Who?
Notes	Children attending? Age? Reason for attending
	CPLO attendance duration
	Outcome
	If Adjourned, likelihood of resolution without going to final contest?
	Notes

1.3.4 Qualitative data from stakeholders

There are a variety of stakeholders involved in the NMC process. These stakeholders all play a role in the effectiveness, efficiency and impact of the NMCs. Capturing their perspectives has been important to provide a range of views on NMC processes, structures and impacts. Overall, 42 people were consulted for this evaluation. This includes:

- 4 members of the Conference Unit
- 6 CPLOs
- 5 DHS workers
- 6 Legal representatives
- 1 Strategic level staff member
- 9 Magistrates
- 8 members of the ADR Working Group
- 3 Convenors of DRCs

All interviews and focus groups were recorded and transcribed with the permission of the interviewee after they had been given access to a Clear Horizon statement on the privacy and confidentiality of all data collected (see Appendix Three) and a copy of the interview schedule (see Appendix Four). Overall, three NMCs were observed to provide first-hand experience of their

running and to see how aspects of the NMCs may have changed after observations were conducted in the initial period of their introduction (late 2010). A participant information sheet was provided to all participants to explain the purpose of the evaluation, the activities being undertaken by the evaluation and to provide contact details should any participants want to query their involvement (see Appendix Three).

A number of processes were implemented to attempt to obtain feedback from families participating in the NMCs. This proved to be a difficult and frustrating process with a number of mechanisms trialled with little or no success. Only a small number of responses were received and while a number of these provided feedback they have limited value to making an assessment of client views of the NMCs. This issue is further discussed in the following section on the limitations of the evaluation (see Appendix Five for the Family Satisfaction Survey).

1.4 Limitations and context of this evaluation

There is one key limitation to this evaluation and that is the lack of family feedback about the NMCs. This element of the data collection faced numerous challenges and ultimately, no substantial feedback was received by families participating in the NMCs. This was despite (i) sending out over 150 surveys to participants that included five questions and an addressed envelope back to Clear Horizon and (ii) the Convenors handing out information over a two month period to families at the NMCs advising them that they could call Clear Horizon to undertake a 10-15 minute phone survey in exchange for a \$30 reimbursement for their time. Eight surveys were received with 5 completed and 3 with relevant feedback. One person responded to the telephone survey.

The challenge for the evaluation was multi-faceted in this respect due to a number of key factors including:

- as feedback from intake staff and private lawyers indicates, the client group in general is one that can be extremely difficult to contact; if lawyers have trouble contacting clients over issues as important as the custody and wellbeing of their children then attempting to contact them for an evaluation process is even more difficult,
- reflecting on the NMC process is not such an easy thing to ask of someone particularly if they are in the midst of a case about child protection and dealing with a range of personal issues and challenges,
- feedback that was received was mostly focused on negative views of DHS and even positive views were focused on the outcomes rather than the process,
- concerns about protecting the privacy of families and therefore the processes required for the intake staff to obtain contact details, make contact with clients, request their permission for Clear Horizon to contact them about the evaluation were felt to be too time consuming to undertake (given the already existing struggles by intake staff to contact families about the NMCs) and with a slim chance of being accepted by families.

Recognising that the voice of families is absent from this report, more questions were asked of key stakeholders about their views on the levels of family engagement and the impact of the NMCs on families. Suggestions regarding how to address this issue are further outlined in the section on recommendations.

Section Two: Findings - NMC data

This section analyses the data that has been collected by the intake process and by the convenors. Clear Horizon worked with the Conference Unit to develop a spreadsheet and a set of data to record relevant information from the intake process and the running of NMCs. It built on the processes that they had developed in the early stages of the NMCs in the second half of 2010.

2.1 Numbers of NMCs and participants

Between the period of January 2011 to the end of October 2011, 413 NMCs were listed. Of these 413 NMCs, 70 were cancelled before the scheduled date (26 were rebooked). This means that 343 NMCs were scheduled to proceed on the day. Of these 343, 86 were cancelled on the scheduled date. Therefore during the period between January and October 2011, 257 NMCs actually took place. 54% of these took place at Round-table Dispute Management Centre (RDM) and 46% at the Children's Court. 77% of the NMCs were conducted in joint format and 23% were conducted via a shuttle format (i.e. where parties cannot be in the same room due to the existence of risk factors or prohibitive court orders).

Table 2: Numbers of NMCs

Details of NMCs (Jan-Oct 2011)	
Number listed	413
Number cancelled <i>before</i> the scheduled date	70
Number scheduled to proceed on the day	343
Number cancelled <i>on</i> the scheduled date	86
Number that actually took place	257

2.1.1 Document exchange

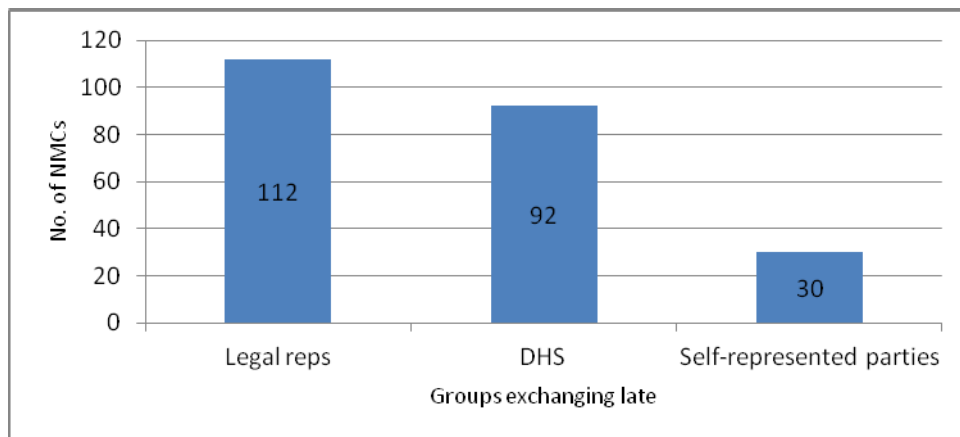
Document exchange is an important element to the NMC process as it is focuses on ensuring that all parties are better informed and prepared for the NMC. Document exchange involves DHS and legal representatives exchanging information that is ideally based on the most recent updates from DHS and instructions from clients to their legal representatives. Additionally, lawyers are being paid an additional fee in recognition of the preparation work expected of them for the NMCs.

The lateness of documents was documented in 172 of the 413 NMCs listed (42%). Documents were not submitted at all in 25 cases with 17 of those (68%) being by self-represented parents and the remaining 32% by the legal representatives of parents and other family members (including children and extended family). No cases were recorded where DHS failed to submit documents.

The parties submitting late documents are presented in Figure 1. This table shows that there were 112 cases where legal representatives were late exchanging documents, 92 cases where DHS were late and 30 cases where self-represented parties were late. A number of NMCs had multiple parties exchanging documents late. Of the 172 NMCs where documents were exchanged late, DHS were late in 53% of these, legal representatives were late in 50%, and (with examples of more than one legal representative exchanging late); and self-represented parties late in 10%.¹

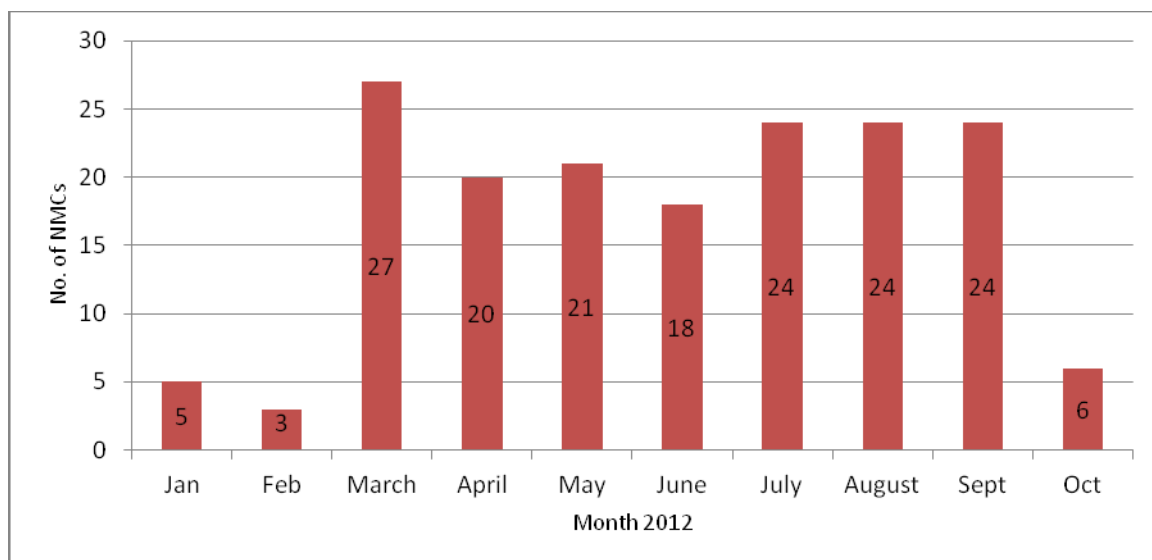
¹ There were some NMCs where more than one legal representative was late in exchanging documents and a number of NMCs where more than one legal representative exchanged documents late (so while there are more occurrences of legal representatives exchanging documents late – as shown in Figure 1 - they occur in a lesser number of NMCs than those where DHS exchanged late).

Figure 1: Numbers of NMCs where documents were exchanged late



On a month-by-month basis the number of NMCs where documents have been exchanged late has remained relatively stable although there was a strong decrease in October 2011.

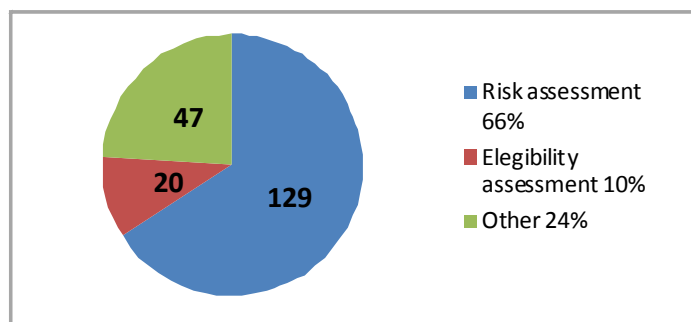
Figure 2: Numbers of NMCs where documents were exchanged late (month-by-month)



2.1.2 Intake process

The intake process took an average of 3 hours and 16 minutes to complete. This included an average of 20 minutes to complete the eligibility assessment; 2 hours and 9 minutes to complete the risk assessment and 47 minutes on other tasks related to intake. On average, the risk assessment takes up 2/3 (66%) of the total time spent to complete intake.

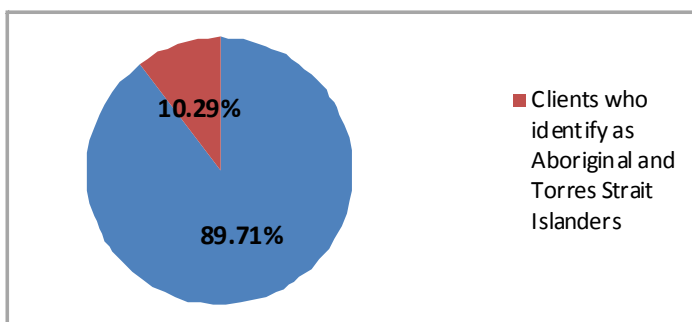
Figure 3: Average time taken for the intake process (in minutes)



2.1.3 Aboriginal and Torres Strait Islander participants

Overall, 10% of clients (42 of 408) identified as Aboriginal and Torres Strait Islander. This was comprised of 3% of clients (6 of 201) in Footscray and 17% of clients (36 of 207) in Preston.

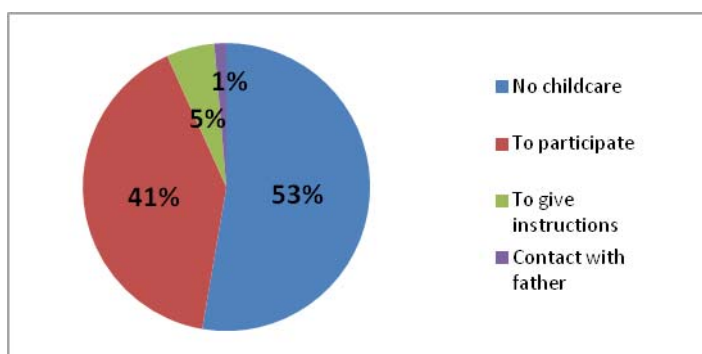
Figure 4: Clients who identify as Aboriginal and Torres Strait Islander



2.1.4 Children participating in NMCs

Children attended 29% of the NMCs and the main reasons for their attendance were because parties had no access to childcare (53%) and because they were present in the NMCs as participants (41%).²

Figure 5: Reasons for children attending NMCs



2.1.5 Mention at which cases referred to an NMC

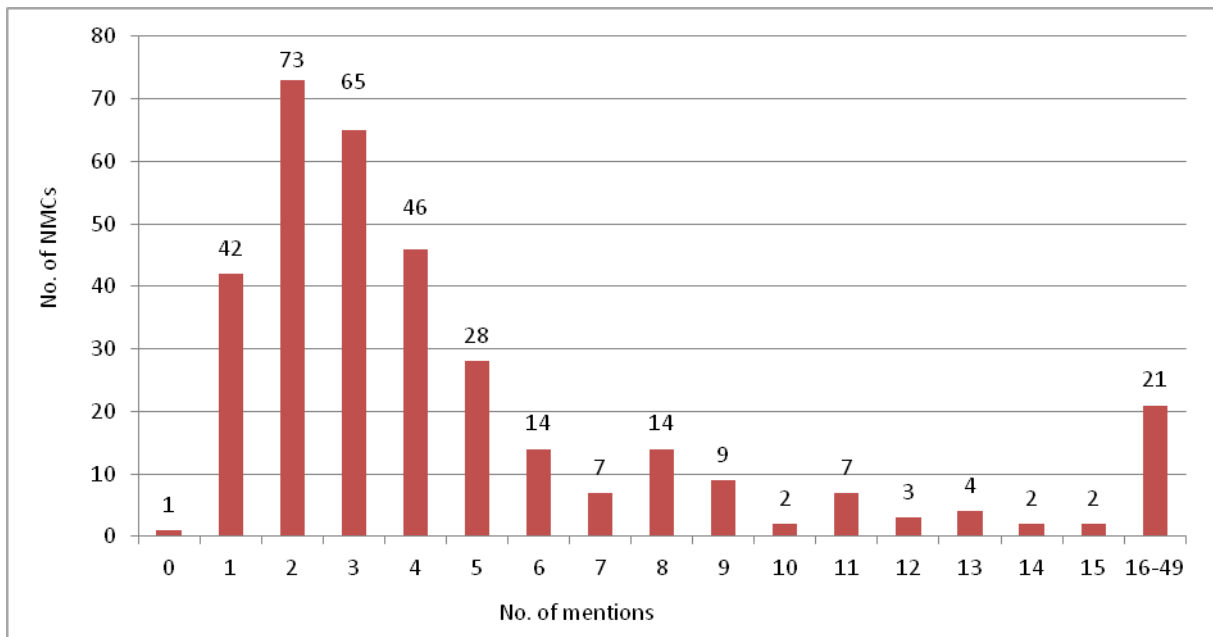
12% of NMCs scheduled to take place were referred to NMCs at the first mention with 21.5% of cases being referred at the second mention and 19% at the third. Overall, 52% of cases are being referred to NMCs by the third mention and 75% of all NMCs are being referred at or before the fifth mention.

Table 3: Percentage of cases referred to NMCs by mention

Mention	No. of NMCs	% of NMCs listed	% at and below this mention
1	42	12.3%	12.3%
2	73	21.5%	33.8%
3	65	19.1%	52.9%
4	46	13.5%	66.4%
5	28	8.2%	74.6%

² The point 'contact with father' relates to one case where a child attended the NMC to see their father (i.e. visitation).

Figure 6: Mention after which the case was referred to an NMC

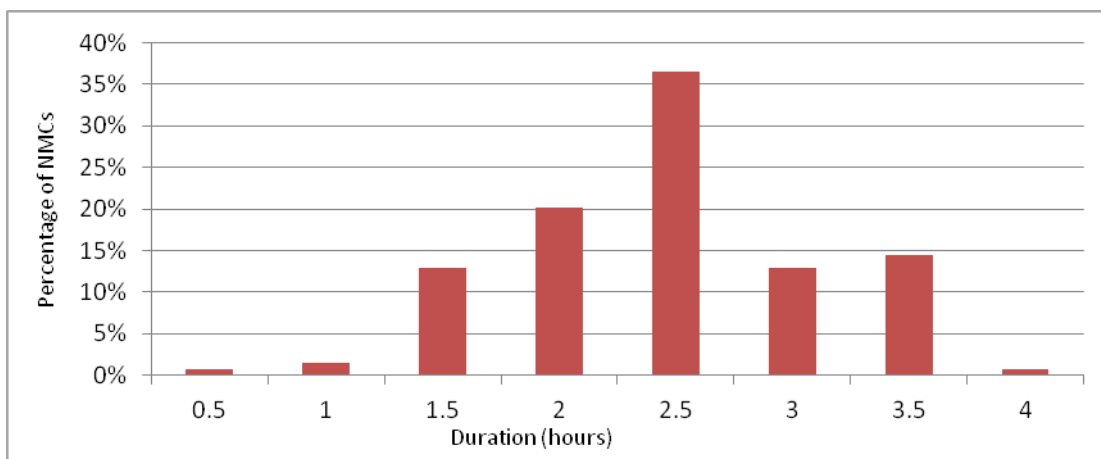


The second mention is the current ‘trigger point’ for NMCs and this is when the largest amount of cases are being referred but this is almost matched by those cases being referred at the third mention. Given that the second mention is the preferred point for cases going to NMCs, the fact that only 21.5% of cases are actually being referred at that point does perhaps require further attention. Also, there does appear to be a larger than expected number of cases going to NMCs at the first mention.

2.1.6 Duration of NMCs

The average duration of NMCs is 2 hours and 27 minutes. 35% of NMCs went for 2 hours or less and 15% went beyond the scheduled 3.5 hours. 49% of NMCs commenced on time. Of the 51% that commenced late, 86% commenced within half an hour of the scheduled start time. The remaining 14% were generally cancelled. Of the NMCs that commenced late the parties who arrived late were families (62%); lawyers (27%); and DHS (10%).

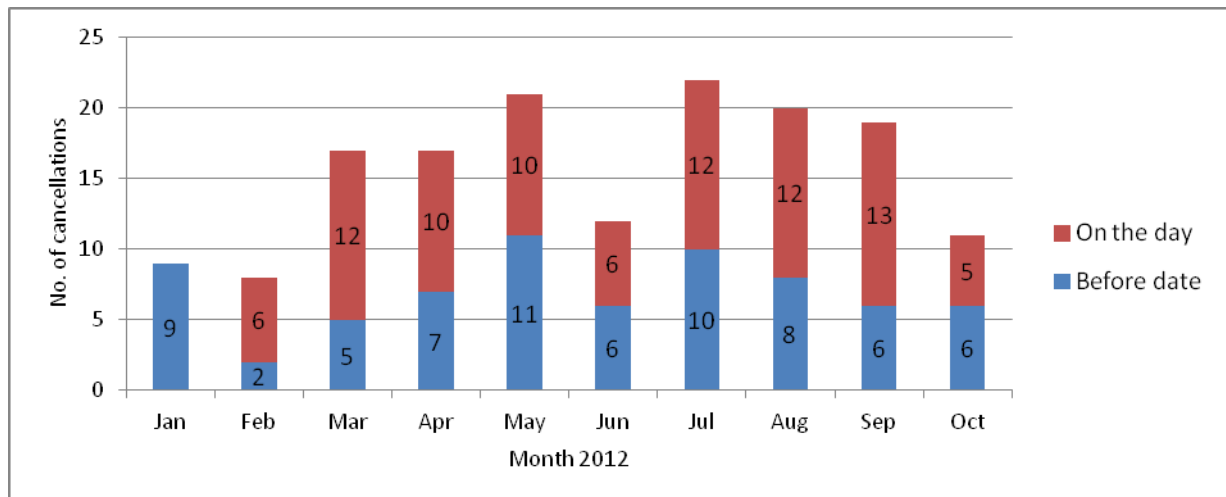
Figure 7: Duration of NMCs



2.2 Cancellations

413 NMCs were listed for the period between January and October 2011. Of these 413 NMCs, 70 (17%) were cancelled before the scheduled starting time of the NMC on the date of its listing, and a further 86 (25%) were cancelled on the day. Overall 38% of NMCs listed were cancelled either before the day or on the day of the NMC.

Figure 8: Number of cancellations per month (prior to scheduled date and on the day)



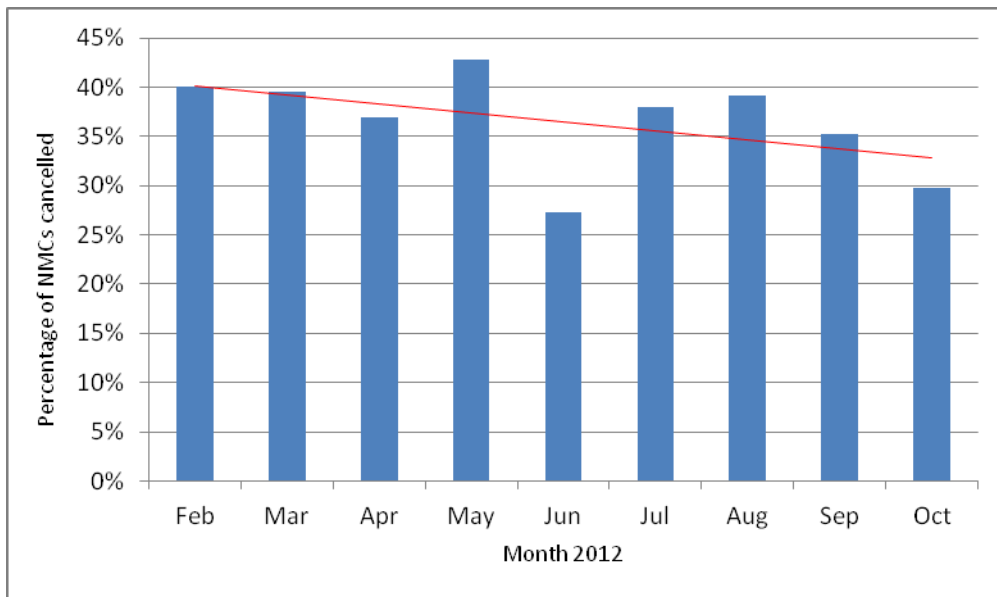
2.2.1 Month-by-month cancellations

When looking at cancellations as a percentage of the number of NMCs listed each month there is some variety in the numbers listed and cancelled each month (see Table 4 below) but there is a clear downward trend highlighted if looking over the course of the year (see Figure 9 below). This trend shows the overall rate of cancellations moving from 40% to approximately 33%. This is an encouraging sign and an important achievement for the Conference team due to the many factors beyond their control that influence cancellation rates. During the year, intake and communication processes (with families) have been modified and new initiatives trialled (e.g. SMS-ing families to remind them of the NMC) to look at the best ways to ensure families are well informed and attend.

Table 4: Number of NMCs cancelled per month

Month 2011	NMCs listed	NMCs cancelled	%
January	11	9	82%
February	20	8	40%
March	43	17	40%
April	46	17	37%
May	49	21	43%
June	44	12	27%
July	58	22	38%
August	51	20	39%
September	54	19	35%
October	37	11	30%
TOTAL	413	156	38%

Figure 9: Total cancellations as a percentage of NMCs listed per month

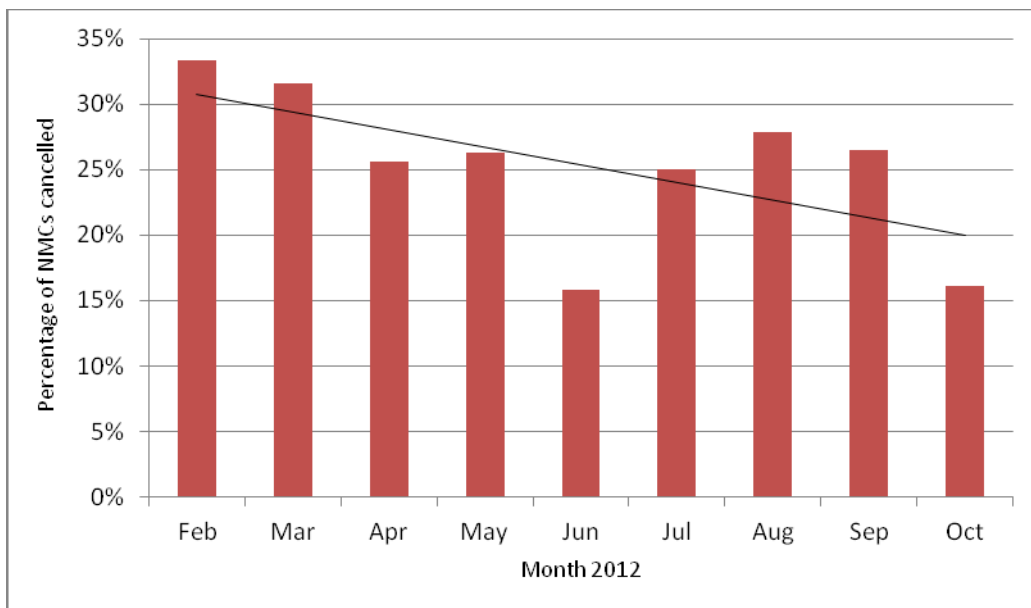


[Note: Given the small number of NMCs listed in January, the cancellation rates from February onwards give a clearer view of trends.]

2.2.2 Cancellations on the day

It is important also to analyse the number of NMCs cancelled on the day as a percentage of those NMCs scheduled to take place. Those NMCs cancelled on the day have a much larger impact on resources and are more frustrating for those participants that do present themselves on the day. When looking at that data (see Figure 10 below), the trend shows that the rate of cancellations on the day have moved from approximately 31% to 20% of NMCs per month.

Figure 10: Cancellations on the day as a percentage of NMCs scheduled to take place³



³ Cancellations on the day refer to those NMCs cancelled after the scheduled starting time.

2.2.3 Reasons for cancellations

Reasons for why NMCs were cancelled are kept by both the intake officer and by the convenors on the day of the NMCs. Before NMCs, parties being unavailable accounts for 30% of cancellations and this rises to 51% when ‘party ill’ is included.⁴ On the day of the NMCs, ‘party unavailable’ accounts for 76% of cancellations and this rises to 84% when ‘party ill’ is included. The cancellation rates on the day of the NMCs are, therefore, dominated by the fact that parties (i.e. parent or parents) are not turning up and are generally not advising the Conference Unit of their failure, inability or lack of intent to attend the NMCs.

Figure 11: Reasons for cancellations (before the scheduled date of the NMC)

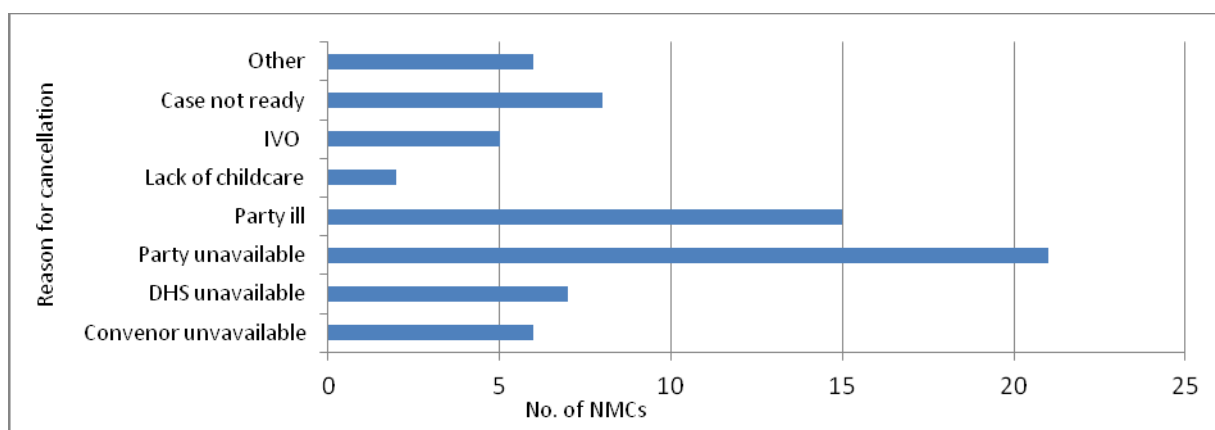
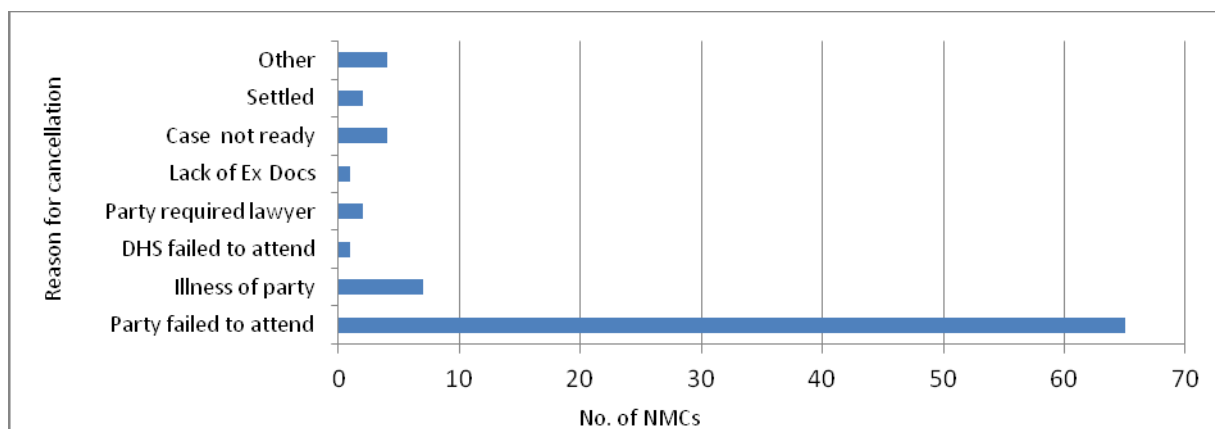


Figure 12: Reasons for cancellations (on the scheduled date of the NMC)



2.2.4 Relationship between mention points and cancellations

One other element raised as a possible factor for the cancellation rate was the timing of when cases are referred to an NMC. The table and figure below show that those NMCs that are referred after one or two mentions have the lowest cancellation rates on the day of the NMCs even though the official ‘trigger point’ for referring cases to NMCs is the second mention. Those referred at the fourth mention saw the greatest level of cancellations (see Table 5 and Figure 13 below). There are many factors which contribute to why an NMC is cancelled and while the stage of the case may be one element (i.e. at what mention referral to an NMC happens) it is difficult to assess the impact of this in isolation from other factors.

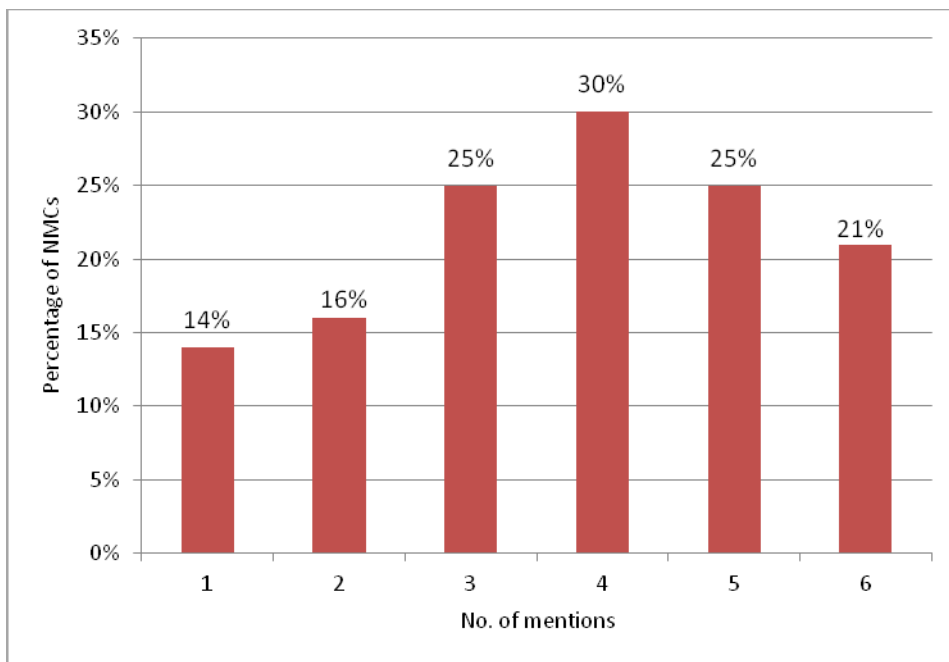
⁴ Parties or party refers to family and extended family members

Table 5: Number of NMCs cancelled in relation to the number of mentions

Mentions	No. of NMCs	No. cancelled on the day	% cancelled
1	42	6	14.3%
2	73	12	16.4%
3	65	16	24.6%
4	46	14	30.4%
5	28	7	25.0%
6	14	3	21.4%
7	7	5	71.4%
8	14	4	28.6%
9	9	5	55.5%
10	5	1	20.0%

[Given the smaller numbers of NMCs listed for those cases referred after 6+ mentions, the important points of analysis are those cases being referred to NMCs at the 5th mention or earlier)

Figure 13: Percentage of NMCs cancelled on the day by number of mentions

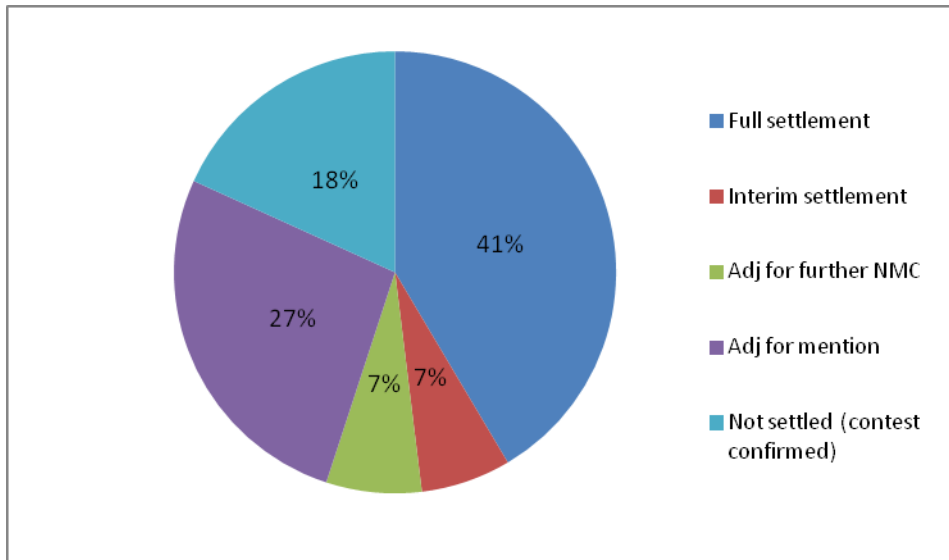


Another point raised in the feedback from stakeholders was that the 9.30am start for the morning NMCs was too early and that this might contribute to cancellations. But analysis of the data shows that 22% of NMCs scheduled for the morning session were cancelled on the day while 27% of the afternoon sessions were cancelled on the day – more afternoon sessions are cancelled than morning ones. At the same time though, parties failing to attend as the cause of cancellations is slightly higher in the morning sessions (75%) than the afternoon session (65%). There is no substantial difference in terms of the percentage of NMCs that commenced on time between the morning and afternoon sessions (31% of morning NMCs and 30% of afternoon NMCs commenced on time).

2.3 Outcomes

The outcomes achieved by the NMCs are focused on three main categories: full settlement, partial settlement (i.e. adjourned for mention, adjourned for further NMC, or an interim settlement) and not settled with a contested hearing listed. The figure below shows that 41% of all NMCs reached a full settlement; 41% reached some sort of partial settlement and 18% were booked off for a contest.

Figure 14: Outcomes from the NMCs



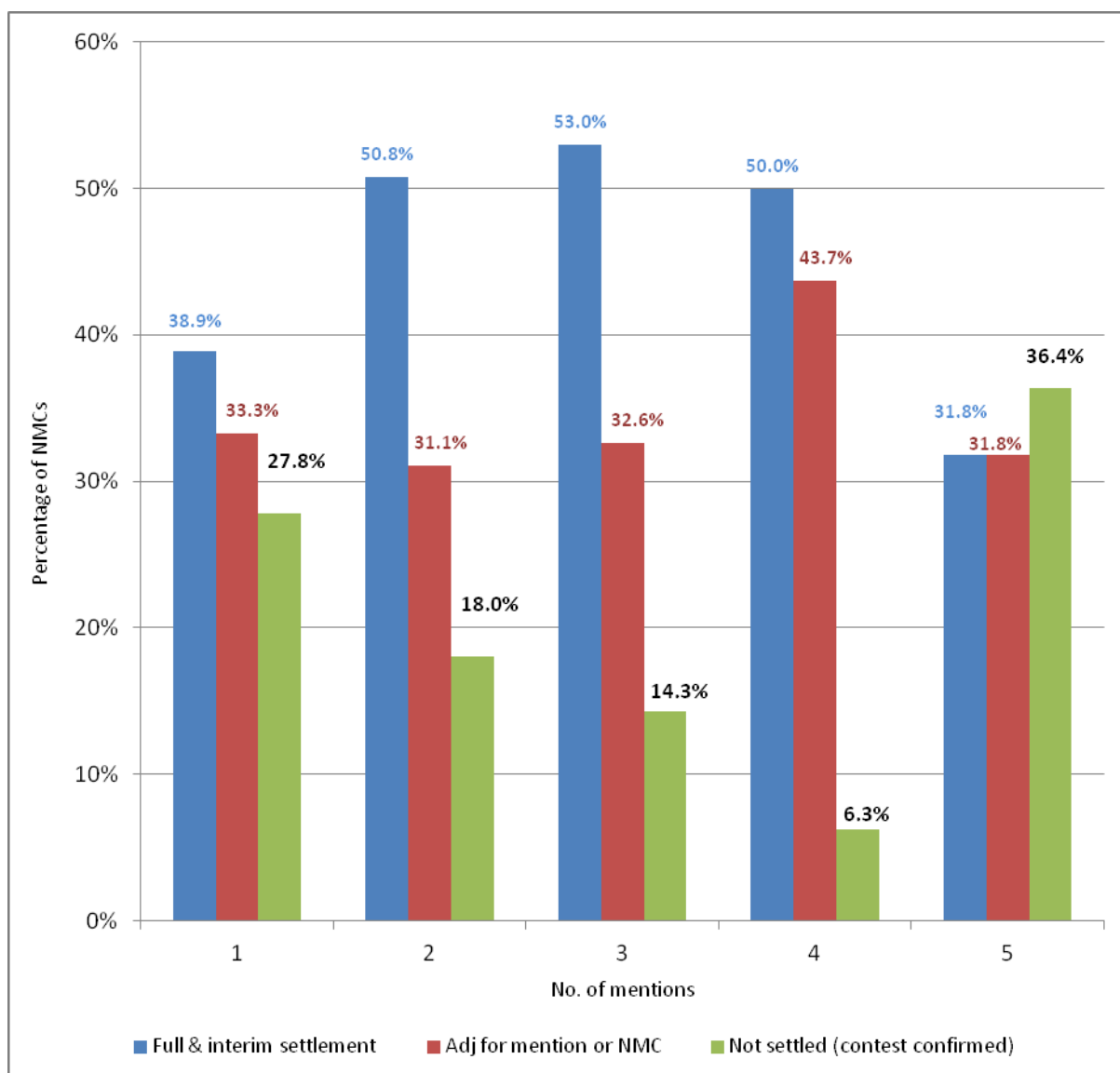
The key points in analysing outcomes are that (i) even where no settlement has been reached and the NMC is booked for contest there are potential gains in terms of enhancing parties' clarity around the relevant issues and related processes; (ii) the partial settlements can be close to settlement as the agreements put in place through negotiations can mean that the case will potentially settle after the next mention/NMC if parties adhere to the processes agreed upon; (iii) challenges exist in arriving at settlements if the booking of a contest is seen as an important 'back-up' mechanism even while negotiations and agreements may be progressed in the interim period.

An important element of looking at outcomes is to explore what factors may be important in achieving settlements and agreements and what might lead to contests. There are multiple factors that contribute to the nature of the outcomes and agreements achieved in any NMC. An important factor that has been documented in the data collection is the mention after which a case is referred to an NMC.

2.3.1 Number of mentions and outcomes

Analysis of this data shows that the lowest percentages of cases that are going to contest are those that have been referred to NMCs after the fourth mention. The graph below shows that a high number of NMCs go to contest after the first mention (27.8%) and this moves downwards until the fourth mention (where only 6.3% of NMCs go to contest) after which it moves higher again.

Figure 15: Outcomes from the NMCs in terms of mentions⁵



While it needs to be reinforced that the number of mentions is but one potential factor in the types of outcomes achieved, this data indicates that the optimal time for cases being referred to the NMCs is after the third or fourth mention in relation to the number of NMCs that go to contest and achieving full settlements. One point that makes this more complex is that cases referred to NMCs at the fourth mention also have the highest rate of cancellations on the day (see Figure 13) which would impede the focus on reducing the length of the court process.

What this data also highlights is that cases are being referred to NMCs after the first mention (14% of NMCs that took place were referred after the first mention) when the original optimal ‘trigger point’ that the BCG report⁶ recommended was the third mention. It is unclear what factors cause cases to be referred at this early point but the rate of NMCs going to contest is higher than those going to NMCs after the second, third or fourth mention.

⁵ The above table has been structured with full settlements and interim settlements grouped together and those NMCs adjourned for mention or NMC in another – the contents of both are listed below. The category of those NMCs cancelled remains the same.

⁶ Boston Consulting Group, Child Protection Proceedings Taskforce: Background Materials 19th February 2010

The following table shows all outcomes for NMCs in relation to the mention after which they were referred. It focuses on the first five mentions as total numbers of NMCs reduce substantially for mentions between seven and forty-nine and therefore make it difficult to make accurate comments around trends.

Table 6: Breakdown of NMC outcomes per mention at which case was referred to NMCs

Mention	Full settlement	Interim settlement	Adj. for mention	Adj. for further NMC	Not settled (contest confirmed)	Total	% of all NMCs
1	13	1	10	2	10	36	14.0%
2	24	7	16	3	11	61	23.6%
3	23	3	14	2	7	49	19.0%
4	14	2	10	4	2	32	12.4%
5	5	2	5	2	8	22	8.5%
6	7	0	1	1	2	11	4.3%
7 to 10	8	1	5	1	2	17	6.6%
11 to 20	9	1	5	1	4	20	7.8%
21 to 49	4	0	3	2	1	10	3.9%
Total	107	17	69	18	47	258	100.0%

Section Three: Findings - stakeholder feedback

This section focuses on the qualitative data that was obtained from interviews and focus groups undertaken with key stakeholders. This data was presented at a half-day Evaluation Forum where key stakeholders analysed and discussed the importance of these points, the contexts and factors that have contributed to them and what they mean for the future of the NMCs. This section also uses direct quotes from these consultations to highlight key points that have come out as important themes across the interviews and focus groups. The first sub-section focuses on those things that have worked well and that stakeholders have felt have been successful aspects of the NMCs. The second sub-section focuses on the issues and challenges identified by stakeholders and includes additional data analysis by bringing in relevant aspects of the quantitative data analysed in Section 2.

3.1 Achievements and successes

3.1.1 The NMCs increase clarity and understanding of issues and processes for families

There was clear feedback from the majority of stakeholders that the NMCs make an important contribution to enhancing families' clarity and understanding of the issues they are discussing and debating with DHS and the processes they are involved in (both via the court and with DHS). This was seen as important especially given that families are not engaged with, or can often feel excluded from court processes and the discussions and negotiations that can take place in the corridors or the waiting areas outside court. It was also viewed by a majority of stakeholders that this was an advantage over the DRC model.⁷

The importance of the NMCs enhancing the understanding of clients around the issues they are facing, the reasons why they are there, the processes they need to comply with to progress their case, and what the implications are if they do not are central to obtaining more durable settlements. In a sense, this is building the capacity of families to be able to better engage with DHS and understand their own situation and that of their child or children. This means that the NMCs can be an important step in (at least) clarifying issues between DHS and families and arriving at agreements that can progress the case forward in a positive manner (even without necessarily reaching a final settlement).

When you get to an NMC and you have those discussions they're inclined to turn their minds to, okay we're not agreeing to any Order but, as far as your telling me, I have to do a, b and c. ... I think it does help in some circumstances where the matter progresses at least... So it's an opportunity for the parents to really understand, this is what you need to do, so that if they don't do it well there are consequences, and if they do do it, then that's great as well. [NMC11_18: CPLO]

I think the parents do feel more engaged with this process than just hearings in Court because they get to speak in the mediation, they get to put their own view forward in their own voice without having to have a lawyer speak on their behalf, so I think they find they're very engaged. And if they don't understand something they can ask, or say they don't understand something, we explain it to them, so I think they feel very engaged. [NMC11_06: CPLO]

It really depends on the family, and how they engage with DHS in general. Most of them have been okay. I think there has been a few that have been really good, and I guess it has given everybody an opportunity to sort of talk about things, and for the family to feel supported. ... They sort of feel a bit more empowered because they have got people standing beside them that they can then have their say. [NMC11_15: DHS]

⁷ The DRC (Dispute Resolution Conferences) are the model that the NMCs are superseding. They continue to run at this stage and are being phased out at the Melbourne Children's Court while the NMCs are being fully rolled out. The DRC model is facilitated by experts in child welfare, child psychology, and social work; do not involve prior document exchange or follow a model such as the eight step model that structures the NMCs. The DRCs are booked for a shorter period of time and no legal representative for DHS is present.

3.1.2 Positive agreements and settlements are being reached

This point has clear connections from the previous point raised in that greater clarity around issues, expectations, and pathways for agreements enables better agreements to be reached. The feedback indicates that the time allocated to unpack the issues of the case, especially when they involve high levels of complexity, is valued as an important factor in achieving better outcomes. This time provides space for families to be able to engage and participate in ways that they had previously not been able to when compared to DRCs and the court process where more of the discussion about the case takes place between legal representatives and DHS staff.

Even if there isn't a final resolution to the application, very often the NMC results in an agreed outcome, and expectations of what is required by the parents are made a lot clearer, and it is done in a meeting that is structured in such a way that it is not threatening, it is not done in a rush, and so I think the information for everyone involved has greater clarity. [NMC11_05: CPLO]

They are actually taking part in it, and I think it does achieve better results, and more realistic results and something that your client is more likely to stick to. [NMC11_04: LAWYER]

In terms of when settlements are reached, I think they are more generally happy with them than when it is happening like a DRC or mention where conditions are done fairly quickly and everything is kind of rushed and they are not always central to that process occurring. [NMC11_04: LAWYER]

There is no doubt that the NMC provides an excellent space for people to carefully consider the sort of arrangements that need to be made for the family. So I think that would be one of the benefits that I have seen, particularly in some very complex and difficult cases. [NMCFG: MAGISTRATE]

3.1.3 The eight step model and skilled convenors provide a good structure for discussions

The eight step model used to structure the NMC process provides a clear step-by-step guide for all parties involved. An important element of this is that it is clearly laid out for families so that they know what the process involves and where it is heading and that it progresses at a pace that they are able to follow and engage. The convenors role is a challenging one and overall, views from stakeholders were positive. Their level of preparedness and professionalism was highlighted as was their ability to manage what can often be difficult situations and complex discussions.

I really like how everyone in the room understands how the mediation is going to, sort of, unfold throughout the day. ... There was a criticism of the DRCs, where it would just be rambling mass of everyone talking, whereas I think the eight step process keeps it quite controlled and you can see what steps you're up to on the whiteboard, so I do like it. [NMC11_06: CPLO]

I like the fact that there is a structure. I think that because it's broken down for the parents to understand makes it easier ... Given it is step by step and it is literally taken at that slower pace and explained to them, I can honestly say I think the parents appreciate it a lot more. [NMC11_18: CPLO]

They are obviously trained and assessing everyone's mood and moving the conference, and moving the NMC'S at a pace that avoids conflict. ... They read and prepare as much as we do, and they understand what is going on. [NMC11_01: CPLO]

I would say overall it has been done really well. I think the Convenors do a great job. ... Definitely all well prepared, look and I think the majority of the convenors do a really good job ... facilitating discussions, staying neutral, staying independent, and coming in when we have a break, and touching base with mum and dad, and saying how is it, how are you finding it, I think all that stuff is great. [NMC11_04: LAWYER]

3.1.4 The presence of Child Protection Litigation Officers (CPLO) for the duration of the NMCs is positive for DHS staff and contributes to better agreements

Since the initial evaluation in 2010 where DHS staff expressed the clear view that they preferred CPLO staff to attend, DHS has been able to provide greater resources to this area to enable CPLO staff to attend as many NMCs as possible for the duration (this is the preferred option).

The feedback on the presence of CPLO staff was overwhelmingly positive from all parties. For DHS workers, especially those with less experience, their presence enables them to focus more on the issues and protective concerns of the case and less on the legal aspects of agreements. The CPLO presence also provides them with support in engaging with legal representatives who may have years of experience in the field. A number of lawyers felt that their extended presence also enabled better outcomes to be achieved as they were able to more clearly inform the DHS workers about their position and on potential options for agreements throughout the NMC rather than at the end. This avoided discussions being held about agreements that were then rejected or modified by the incoming CPLO worker towards the end of the NMC which added to the duration of the NMCs.

All the CPLO staff interviewed felt that they were able to better support DHS workers and able to contribute to achieving better outcomes by being present for the duration of the NMC (whenever possible). When they attend for only the final portion of the NMC to help draw up agreements they have not been present for all of the discussions leading up to that point and getting 'up to speed' with what has transpired in the NMC can add to the length of the NMC.

I have been at NMCs where they have been present and not present and I would say it is a positive thing; [it] helps to move towards a resolution more quickly. [NMC11_02: DHS]

I would say yes, very helpful when they attend, very helpful, because they have a realistic idea of what is going to be successful in the contest and what isn't, and they can just advise their client accordingly and it makes it a lot easier to just get the matter settled at the end of the day. [NMC11_04: LAWYER]

3.1.5 NMCs are a better place to negotiate (rather than in court or in corridors outside court)

Another view expressed by the majority of stakeholders interviewed was that the NMCs provide a better environment to discuss the case and negotiate ways forward. This was contrasted with the court environment which due to waiting times, 'corridor' negotiations and quick court appearances can be a stressful and disengaging process for families and a frustrating one for all parties involved.

By providing a quieter and calmer environment the NMCs are better placed to hold productive discussions with tangible input from families who are able to obtain a clearer picture of the issues and what is expected and required of them. It also enables DHS and families to have face-to-face discussions and unpack issues of concern in a neutral and supported environment – an opportunity that may have not previously had.

If I compare it to an outcome that we have achieved at Court by negotiation in the hallways, I find that, not in every case, but more often than not, we are back relatively soon, because there has been a breakdown or somebody has not understood the conditions that they were all required to comply with, whereas at an NMC, if we are discussing why the condition is there, why it is important, that they are sticking to that condition and addressing that concern. [NMC11_13: CPLO]

I suppose the problem is with the Children's Court. It's so busy, it's very loud, it is, with people and chaos everywhere and it can be very difficult for people to negotiate matters in a positive sort of way, when you've got all of that sort of happening and often you know people are pretty stressed out, not the lawyers so much but the clients. So having an NMC in a quieter sort of set up maybe useful and of assistance I think. [NMC11_17: LAWYER]

3.1.6 More opportunities exist for relationships between DHS staff and families to be improved

The NMCs provide the opportunity for better working relationships to be developed between families and DHS. This is not to raise expectations that these complex interactions will be ‘positive’ but that by having the opportunity to interact and discuss the issues, more productive relationships are established (which can improve access, communication and awareness of positions). An important point raised by one stakeholder is that this interaction can also benefit DHS staff in gaining a better understanding of family concerns, issues, limitations and potential for change. It was also highlighted that sometimes the NMC is one of the first real opportunities for DHS to engage with families if they are relatively new or if dialogue has been challenging beforehand.

What I have found in so many NMC'S and then talking to my clients afterwards, is that some of them have actually not resolved the final contest issue, and the matter might have to go off to a Directions Hearing and Contest, but if the NMC has worked well, it has actually built up a lot of rapport between the department and the families. [NMC11_05: CPLO]

I think that it is good in the way of improving communications, between the client and the Department and understanding where everyone is coming from. [NMC11_14: LAWYER]

One of the things that I really like about the NMCs is that it does facilitate that flow of information so the department often find out things at the NMCs. [NMC11_16: LAWYER]

3.1.7 The strengths focus of the eight step model has a positive impact

Out of all the eight steps in the NMC model, the strengths focus was one that was the most debated by stakeholders. Generally, the focus on strengths is seen as a good one albeit with some limitations (related to long term cases and particular complex cases). But overall, it was seen as setting a positive ‘tone’ for the discussions on the protective concerns of DHS and in providing a positive initial step in making families feel a bit more at ease and comfortable with the process. As such, it is an important element in laying the foundations for families to feel as though they can engage and participate in the NMC.

It ... assists the mood a little bit better for the parents to hear these good things, before we get into the bad. ... We are all brought together around a table, usually for some not so nice reasons. We need to be able to soften the blow, if you want to put it that way, or put the parents and the children in a mindset where they will talk about the not so nice things after they have heard the nice things. [NMC11_01: CPLO]

I can see on the parent's faces that they relax at that stage. When they hear they are doing some things that are good, instead of just hearing criticism, I think it's a really nice tone for the mediation. [NMC11_06: CPLO]

3.2 Issues and challenges

The issues and challenges section includes more in-depth discussion about each issue and challenge including the triangulation of data from the quantitative material from Section Two.

3.2.1 The document exchange processes need to be reviewed and refined to ensure timely exchange and that up-to-date and relevant information is being exchanged

Feedback from stakeholders indicates that there are issues with the form being used by lawyers to complete document exchange, the quality of the information in the documents being exchanged and the timeliness of the exchange process itself.

The main issue is the documents provided by lawyers. The document itself provides the opportunity for responses to be limited (i.e. yes/no or tick-a-box) rather than containing more open ended questions that require details and explanation. Therefore, the quality of the information in those documents is viewed by CPLOs and DHS as generally poor and doesn't assist them in further understanding the position of the family, their response to certain issues, or what they might be prepared to consider in terms of negotiating agreements.

But from the perspective of legal practitioners, they are often reluctant to commit to a particular position or provide extensive details in the document as things may change in the period between booking the NMC and the NMC taking place. It also appears that some legal practitioners are completing their document exchange form at the time of booking which raises questions about the relevance of information being supplied and the extent to which they are engaging with clients closer to the date of the NMC. While documents must be submitted at least 7 days before the NMC there is currently no limit to how early they can be submitted. Legal representatives consulted also highlighted the difficulty of contacting clients closer to the date of the NMC to get up-dated instructions and discuss the NMC.

On the other hand, some lawyers felt that the DHS Addendum Report was at times taken directly from already existing reports that added no new information to the NMC. Despite this, the DHS documents were viewed as containing more information and a greater level of detail generally than the documents exchanged by legal representatives of families.

The lateness of documents was documented in 172 of the 413 NMCs listed (42%) with the legal representatives of families exchanging late 112 times, DHS 92 times and self-represented parties 30 times. But as a percentage of the number of NMCs where lateness occurred, legal representatives of families were late exchanging in 50% of cases, DHS were late in 53% and self-represented parties late in 10%.

Some comments by CPLO staff have indicated that there was a period of time where there was confusion as to whether the DHS worker or CPLO staff would exchange documents and this is being clarified. Legal representatives also raised the issue of sometimes not having up-to-date details for the current DHS case worker and pointed out the difficulties in reaching clients as an important factor in ensuring timely document exchange. The lateness of documents can impact on the preparedness of parties for the NMC as it was reported that some cases have occurred where documents are photocopied and exchanged on the day of the NMCs.

Another important issue here is that if no new instructions have been taken from clients and if nothing substantially has altered in the 3-4 weeks between booking and holding the NMC then the relevance of the information exchanged is questioned. In these cases, any updates become part of the NMC where legal representatives quickly consult with their clients. Not being prepared and taking last minute instructions can also add to the duration of the NMC. The Conference Unit sought to address the issue of timeliness and was able to get all Magistrates to agree to compliance orders

for the document exchange to be undertaken 7 days prior to the NMC but there continue to be documents submitted late. However, the lateness of document exchange has been relatively steady from March-October 2011 with an average of 23 NMCs having documents exchanged late.

I think the document is lazy, I think it really doesn't help the way that it should do. You will see that the NMC Addendum Report on behalf of the Department asks active questions that require answering, rather than just tick, tick, tick a box. ... It gives an opportunity to say what and why do you disagree with the Department, but no one ever fills them out, that is the problem. And I think moving forward ... the Court needs to crack down on the quality, or the lack of quality of those documents from the parties apart from the Department. [NMC11_01: CPLO]

I think the forms are a bit of a waste of time. Legal practitioner's aren't really keen to put a lot of detail or commit themselves to a lot on the form, so the preparation of it and the receiving of other practitioner's forms are not always, or rarely helpful for the NMC. In most of the NMC's I am not getting the Department's exchange form which is more of a report, which is the morning of the NMC which is really difficult because it makes it hard to get your client's instructions and prepare your form before the conference is taking place. [NMC11_04: LAWYER]

What will happen is there will be a Court date and we will see the client and we get instructions there and ... we book it off for the NMC and the wait is generally at least a month from the date that we book them. I don't have ongoing contact with the client and often clients don't have phone numbers, are hard to get hold of, especially if I'm acting for a child, you know it is quite hard to get updated instructions. ... I'd say 80% of the time the instructions that I have when I go to the conference are quite different from what I put in my documents and the same with other people's. ... I don't pay that much attention to what's in other parties exchange documents because I know that everyone really works ... the same way. So that's a bit of an issue. [NMC11_16: LAWYER]

3.2.2 Cancellations are a challenge and strategies to reduce them are being implemented and will need to continue on different levels to address the issue

Cancellations are an issue that impacts on all participants in the NMCs and also on the resources of all parties taking part in the NMCs. There were 70 NMCs cancelled prior to the scheduled commencement time. But there were 86 NMCs cancelled on the day after the scheduled starting time which meant that other parties (including Convenors, DHS staff, CPLOs and legal representatives) had already presented on the day. On the day of the NMC, family members failing to attend (often without advising anyone) accounts for 76% of all cancellations.

It is important to recognise that this is an issue across the Children's Court and that there are factors beyond the scope of the Conference Unit to address and also factors beyond anyone's control despite the efforts made by the Conference Unit, DHS staff and legal representatives. Stakeholders expressed frustration at this issue and many remarked that this is one consequence of the complex and often dysfunctional client group that is involved in child protection cases. That is, not coming to an NMC (to explore options about their child's welfare and best interest) is indicative of some of the reasons that have often lead to these cases arising in the first place.

It is unclear what level of cancellations might be acceptable given the lack of data about what takes place in other Courts and jurisdictions and the complexities in making comparisons where data is available and with other similar mediation/ conciliation processes (where differing contexts and processes can impact greatly on cancellation rates). The Conference Unit has endeavoured to respond to the challenges of cancellations by continuing to try and call families and send them out details via mail as well as trialling an SMS service that reminds families about the NMCs.

One of the problems that I struck early on was that sometimes parents don't attend, and that is not just an NMC problem, it is a Court problem itself, they just won't come, they are not interested, or don't like the Department at all, so they boycott anything the Department wants, or the Court wants, but that is not an NMC issue... that is a Court wide process. [NMC11_01: CPLO]

It is just the nature of the clientele that sometimes ... if we know that families do use public transport, then we will give them Met tickets and that will often get them there, but sometimes families don't come to Court, and we are still booking in NMC's, and we know that the parents rarely come to Court. And it is a bit of hit and miss. You know, hopefully they will come, but if they don't, well we just sign off and send the registrar letters ... [and] just keep reminding the family where possible, and asking them if there is anything that we can provide to get them to Court. [NMC11_11: DHS]

They won't check with the parents if the date and the time suits the parents, and for some parents there is a huge difference between morning and afternoon in terms of childcare and picking up kids from school and what have you. And you will find that dates are booked in, locked in, and they don't suit, so you will have cancellations in the week leading up to the NMC. [NMCFG: MAGISTRATE]

3.2.3 Appropriateness and timing of cases being referred to NMCs requires further discussion to ensure best results

Stakeholders consulted also pointed out some concerns about the appropriateness of some cases being referred to NMCs. A large part of this concern was around those cases that they felt were clearly never going to settle but were being referred to NMCs with the outcome being (as was expected) the booking of a contest.

It may be that the court's view on what cases are viewed as being appropriate needs clarification in terms of what the NMC process is expected to achieve – that is, not only about achieving full settlements but also interim or even partial settlements that can potentially unpack some of the issues (and potentially lead to a settlement before contest or a shorter contest). Additionally, an important point raised here by Magistrates is that only a small number of cases actually make it to contest and many settle in the lead up to the contest so any process such as the NMC that can initiate such discussions at an earlier phase will be of benefit to the courts in terms of contests being cancelled at the outset of the multiple days booked.

A point raised at the evaluation forum was the point (i.e. the mention) at which cases are being referred to NMCs. There is a clear need for the referral point to happen at the right time – not too early and not too late. Currently, the preferred 'trigger point' implemented by the Court for an NMC is after the second mention. At this stage, only 21.5% of NMCs listed have been referred after the second mention with the next highest being 19% after the third mention. Surprisingly, given the position of the court on the 'trigger point' being the second mention, 12% of NMCs were referred after the first mention.

The data collected by the Conference Unit shows that cases referred at the fourth mention have the lowest rate of being booked for contest and therefore the highest rate of outcomes (i.e. full or interim settlement or adjournments for mentions or NMCs). At the same time, those cases referred at the fourth mention also had the highest cancellation rate on the day of the NMCs (30%). Cases that have been referred to NMCs after the second mention had a cancellation rate of 16% on the day and 18% being booked off to contest. Overall, a balance will need to be struck between the levels of cancellations and bookings for contests (see sections 2.2 and 2.3 for further details on the data).

Adding to this complexity is the feedback from the evaluation forum that perhaps the 3-4 week booking time for NMCs is insufficient for cases being referred after the second mention. This is because DHS may not have had time to engage with families depending on their staffing situation, the timing of the case, and the participation of the family. Taking the case to NMCs too early can make agreement making difficult if little communication has been undertaken between case workers and families. Another point raised in the feedback is that, given the long waiting period for a contest (4-5 months) some legal practitioners want to book a contest even if agreements are in place in the interim as they want the contest booked as a 'safety net' should any agreements not work out.

We are forced to have NMC's whether we want them or not and in many cases there is no room for negotiation, and we want to go straight to a contest, rather than having an NMC and then waiting, because a case can sometimes take up to 4 – 5 months to wait for a contest. So if you have an NMC and then wait for a contest, it is not the best use of time. So I find the fact that we can't just go to a contest ... very frustrating, because we are just going through the motions. We are actually probably not going to achieve anything, because we are so far apart in what we want, and there is so much, angst or conflict, between parties, that putting them together in a room, is asking for trouble. So I think there should always be an option, rather than you have to have one. [NMC11_19: DHS]

Now we are having more arguments in Court as to whether a matter should go to NMC, because in the past we have found that if matters have gone to an NMC, that were never going to settle, the NMC in a sense has been a waste of time, because it was always going to need a Magistrate to decide the case. [NMC11_10: CPLO]

I think there have been quite a few that ... have had to go to a final contest, but often that only becomes clear during the NMC itself, and I would think the majority of the NMCs that I have attended have been useful. Maybe not in resolving the final dispute, but useful in clarifying issues and ... having that option to have proper communication and negotiation for Court. [NMC11_05: CPLO]

3.2.4 The eight step model needs to be flexible enough to respond to the contexts of cases and the capacity of clients

This point was raised especially in regards to those cases where there are a small number of clear issues that some stakeholders didn't feel warranted going into great depth about each issue and running through the entire eight step process. It was also related to the capacity of some clients to sit in a room and have a discussion for a 3 hour period (and then go back to court). Overall, most stakeholders felt that the NMC structure works well but there were a few things that some felt could be improved upon or modified.

The point about the eight step process being rigid was also raised early on in the 2010 evaluation and while here again it is informed by some insightful points raised by stakeholders, other feedback may have had more to do with a general lack of confidence in the process (for example, a preference for the less structured and potentially faster DRC model).

An important point raised in the flexibility of the eight step model was around the issue of consistency as some views were expressed that it sometimes depended on the convenor and their particular approach to how closely they stuck to the eight step model and how much they adapted to each NMC. It may be necessary for the convenors to have a better shared understanding of how they run the NMCs and what is 'negotiable' in terms of flexibility in the model and what is not. This would provide a greater consistency in approach and potentially enhance stakeholder confidence in the model.

Some stakeholders also felt that the flexibility of the NMCs needs to take into account the needs of families that have lower capacity to be able to engage and participate for extended periods of time. While it is already clear that the client group is one with complex levels of capacity and capability, some stakeholders felt that some of their most complex clients struggled with the format and duration. Discussions with the Conference Unit make it clear, on the other hand, that the extent of someone's capacity and willingness to engage at the NMCs is extremely difficult to glean from reports and that there is already great flexibility in the model as the convenors are responding to a complex set of circumstances and balancing up the needs of all parties on the day.

The duration of the NMCs was raised by some stakeholders in particular as it relates to the participation of clients with complex needs and low capacity for engaging in the NMC process. Even though the average time for an NMC is 2 hours and 27 minutes (well below the 3 hours scheduled) and 35% of NMCs went for 2 hours or less, this does not include time going back to the court. While

this process back at court has been streamlined this can still add additional time to the process and take it beyond a total of 3 hours.

Sometimes it is a bit too regimentative. Go through each step and yes sometimes there is free discussion flowing, and it is really past a lot of the steps, and there is no need to stick to each and every step, and as I said, some [times] ... Convenors will just acknowledge that and they will go, okay it is going quite well here, we are being quite productive, we don't need to stop and talk, have we addressed the issues, have we addressed that step, you know, so it is good to have it as a guide, but yes you have to be flexible with it as well. [NMC11_10: CPLO]

The difficulty is some of the convenors are really strict about following the eight step process. Some of them are flexible in saying this is not really relevant, lets kind of move on, but some of them are really kind of strict and say we really need to work through. And when things aren't relevant and things are dragging on, I think the client is disengaged a lot of the time, it makes it difficult to kind of negotiate a settlement when and if we get there. [NMC11_04: LAWYER]

I think in some instances I think it is not relevant. We know exactly why we are there, it is on one issue, it is about mum refusing to go to a psychiatrist, it is something ... very discrete and we don't need to go through an eight point process to figure out whether she is going to go to the psychiatrist or not. ... Sometimes we use the eight step NMC model when really it is a waste of time and we shouldn't. [NMC11_01: CPLO]

It is worthwhile for a family where they know the issues, and they are able to converse with authorities. [But] there are some parents, or even some children, teenage children, that putting them in a room for 2 to 3 hours, going through the eight steps, it has no value at all, because; you know, people like that have to be kept focused and quick, and discuss issues very quickly. [NMC11_20: LAWYER]

3.2.5 Maintaining balanced discussions is an ongoing challenge for convenors especially around focusing on key issues and enabling families to engage and 'have a say'

The challenges facing the convenors in ensuring a balanced discussion are substantial and balancing discussion in the midst of what can be an emotionally charged environment is difficult. Overall, the authority of the convenors is respected with the main challenges identified as the consistency amongst the convenors.

Concern was expressed (especially by DHS staff CPLOs) about the adversarial nature of some legal representatives in the NMCs and the ability of convenors to manage this when it occurs. While feedback generally pointed to the ways in which legal representatives have gradually gained more experience of the NMCs and are more comfortable with the process, one element raised was that sometimes the adversarial element in the NMCs emerged as a consequence of more experienced solicitors giving the cases to barristers who are not as familiar with the case or experienced with the NMC process.

Another element raised by DHS staff and CPLOs is the need to ensure that families 'having their say' does not become what they saw as a therapeutic session of airing grievances or an opportunity to abuse DHS workers. While recognising the need for families to have their say, some stakeholders felt that this need to be more tightly controlled and structured around the issues being discussed at the NMC.

All of us involved in an NMC are really mindful about the objectives being legal, and trying to resolve a legal dispute, rather than it being overtaken by a party or parties, just being heard. ... Particularly if a parent ... begins to get off track, and the issue is no longer being looked at in a legal perspective, it is not helpful to everybody there, in resolving the dispute. ... There just isn't the time available to use it as a process for dealing with parent's complaints and things like that. [NMC11_05: CPLO]

I don't think the [convenors] have enough authority. I think they need to be more pushy in a sense. Everyone respects them ... but if they were actually given more power and more authority ... they would get more outcomes. [NMC11_11: DHS]

There have been some occasions where we have felt that ... the protective workers, have been somewhat bullied and you know the other solicitors for the other side have tried to sort of cross examine them, and they have felt like they have been in the witness box, and we definitely have to jump to their aid, and put a stop to that. ... I think there are certain occasions where the Convenor needs to take a bit more control in how the actual conference is running, and has made their presence be known, and yes provides a guidance at certain times in the conference. [NMC11_10: CPLO]

3.2.6 The strengths focus of the NMCs has some limitations

While recognised that this is a mostly positive element of the NMCs, some of those same stakeholders also recognised issues with the strengths and issues process. For some of the longer-term cases going through NMCs with long-standing issues, it can be difficult for 'strengths' discussion of the families to result in anything meaningful (and convenors are already modifying the extent to which this process is undertaken for such cases).

Also, when strengths are discussed around the situation of the child, this can actually reflect badly on parents if the strengths highlight the good things happening in the life of the child who is now out of their care. But this element does seem to respond to one DHS staff member who felt that the strengths focus shifted attention away from the child to the family members. Some DHS staff also reported that legal representatives had used the strengths they had listed as leverage to question the need for any involvement by DHS in the first place. One important point raised was that having the issues already on the whiteboard can have a negative impact on the mindset of the family members being focused upon. While the strengths are discussed and written up on the board, the issues are already written up by the convenor beforehand. One stakeholder did mention that at a recent NMC, rather than listing all the issues, the convenor used a couple of headings which were discussed and this was felt to be not as confronting for families. According to the Conference Unit, this element was taken from a recent training session and was being trialled to assess its impact.

Sometimes it works really well sometimes it backfires on me. So you start with the strengths ... and some families have a lot of strengths but they also have a lot of concerns. And what I have noticed is that the more strengths that you speak up about, and are written up on the board, the more the solicitors take that for granted and go Oh well, you have said that A, B, C and D are working really well, why do you want an Order? ... So it tends to sometimes be thrown in our face what the strengths are rather than yes there are strengths ... but there are still concerns, and there are still risks to these children. [NMC11_11: DHS]

I feel that sometimes they [DHS' protective concerns] are minimised, because we spend so much time talking about strengths ... We spend a lot of time talking about those things, and often there is minimal strengths to state ... and we actually haven't focused on the purpose of why we are there. The purpose is not to talk about the strengths otherwise we wouldn't be in an NMC really. I feel that that shouldn't be the initial point of discussions. [NMC11_19: DHS]

Section Four: Discussion and recommendations

This section provides an overall discussion of the findings in the context of the key evaluation questions developed for the NMCs and also a number of recommendations informed by the findings presented in the previous sections.

4.1 Findings and the key evaluation questions

4.1.1 What was the impact of preparation processes on the delivery of the NMCs?

Preparation processes impact on the delivery of the NMCs in multiple ways.

Firstly, the quality of information exchanged and the timeliness of the document exchange process enables all parties to be informed and aware of key information pertaining to the case. When this works well (i.e. documents are well prepared and exchanged in a timely fashion) this has assisted delivery of the NMC in providing a clear position to commence discussions and negotiations. At this stage it appears that there are still issues around the quality of the documents submitted by legal representatives (and the quality of the form itself) and therefore the extent to which this information is useful for DHS in preparing for the NMC.

At the same time, DHS documents while more informative and detailed have also been criticised as at times being copies of elements from already available documents or documents already seen by legal representatives. Some parties felt that the process makes little difference to them in their preparation as positions will inevitably change when the date of the NMC arrives and important elements around clarifying positions and listing potential options for negotiation are not discussed (at all or enough) on the exchange documents. Both parties have had issues with timeliness of document submission. Further attention to this process is required for it to impact on the NMCs in the way envisaged at the outset of the NMCs.

Secondly, the extent to which the Conference Unit can contact and engage clients before the NMCs is seen as a key factor in engaging families and informing them of the NMCs and enhancing the prospects of them attending. This has continued to be a challenge for the Conference Unit and while processes have been trialled to make every effort to contact clients, this continues to be a difficult area in which to make improvements.

Thirdly, the ability of convenors to be able to comprehensively prepare beforehand by accessing relevant case files and histories enables them to facilitate the NMC on a solid body of information. The level of preparedness of the facilitators was a success factor commented on positively by most stakeholders and is an important element in the efficient facilitation and delivery of the NMCs.

4.1.2 To what extent did the parties shift into the new roles required within the NMCs?

Overall, this seems to be happening. Convenors have been able to provide a clear structure for the NMCs adhering to a focus on balanced discussions (not without its challenges) and following the eight step model. Some feedback indicated that the model needs to be more flexible at times and greater consistency across all the convenors but overall, the Conference Unit has been improving areas where they can without losing sight of the need to engage families in the process.

Perhaps the biggest cultural shift has been that for the legal representatives. In general, they have responded well to the challenge of their changing role in the NMCs although this includes a variety of responses from those that have embraced the process and strongly believe in it and those that have little confidence in the approach. The change for DHS staff has been well supported by the increased presence of CPLOs to support them and offer advice during the NMCs. The CPLOs have

clearly embraced the concept and while they provided thoughtful feedback about elements they would like to see changed or modified they were extremely positive about its overall impact and very positive about their enhanced role in the NMCs. This view was supported by other stakeholders who saw their contribution as an important one in supporting DHS staff and providing advice about orders, agreements and conditions.

Most stakeholders expressed the view that families were more engaged and were able to contribute – this was especially so when compared to their often minimal involvement in the mention court and in DRCs. While families will engage in different ways and to the extent they feel comfortable, the NMCs provide a space that gives them the opportunity to contribute to the discussions.

These changes mean that the process overall, is viewed as less adversarial rather than non-adversarial. With the presence of CPLOs there are at least two legal representatives in every NMC. Also some feedback from DHS staff and CPLOs indicated that the level of adversarial behaviour from legal representatives is something that needs to be closely controlled by convenors.

4.1.3 To what extent was procedural fairness achieved?

Overall, there have been important gains in procedural fairness as families are given the time and encouragement to participate and have their say and are involved in both understanding and guiding the process that is ultimately guided by the convenor down a path focusing on the best interests of the child.

Stakeholders in general were positive about the amount of time allocated for the NMCs and most were happy with the 3 hour limit (the average duration is approximately 2 and a half hours).

Feedback about families was that all were encouraged to participate and many did so to the extent that they wished. They also were able to have their say and be heard. A key element of the NMCs is building the capacity of families to understand the issues and processes and gain a clearer view of what agreements are being reached, what their responsibility entails, and what the consequences are when they stick to the agreement or fail to do so.

The focus on the child is a complex issue as in reality, the focus of the NMCs is very much on the parents as they are the ones whose behaviour has resulted in the intervention of DHS and whose future behaviour will greatly influence outcomes for their child or children. But this is taking place in an overarching context of ensuring that outcomes are in the best interests of the child in both the short and long term. Some DHS and CPLO stakeholders highlighted the importance of the NMCs not being a forum for parents to air grievances against DHS or use the NMC as a therapy session and were keen to reinforce the focus on the child during the NMCs.

4.1.4 How effective were the NMCs at achieving intended outcomes?

Overall, there is confidence amongst stakeholders that the NMCs can be effective at achieving better and more durable outcomes. An important element of this is that the time spent on the NMCs, the structure of the NMC process, and giving families the opportunity to engage DHS staff and clarify issues all provide an opportunity to build the capacity of families. That is, the capacity to understand the issues around why they are there and more clearly comprehend what they are required to do to move their case forward in the best interests of the child. The importance of this for a client group dealing often with multiple issues and problems in their lives is of clear importance and a real positive element of the NMCs.

Perhaps the key factor in being able to reach an agreement in the NMCs has been that they are simply better places to negotiate compared to either the court system or the DRC model of dispute resolution. There are less adversarial discussions taking place in a less stressful environment with time allocated to unpack the key issues focusing on giving families and DHS staff the opportunity to

openly and frankly discuss the key points fully supported by legal representatives and guided by qualified facilitators.

Overall, feedback from stakeholders pointed to the potential for the relationships between DHS staff and families to be improved by participating in the NMC. While this is certainly not always the case, most stakeholders felt that it only rarely impacted negatively on the relationship and therefore either improved it or maintained it. The challenge in this assessment is that the evidence lays in the months and even years after the NMC and as staff turnover at DHS can be quite high, the 'story' of any such change can be difficult to capture.

4.1.5 What was the impact of the NMCs on the efficiency of the Children's Court?

It is too early to make a definitive comment in response to this question and it is unclear whether or not the data collection processes of the Conference Unit and the Children's Court are currently able to clearly track cases from NMC through to possible returns to court or breaches to make a clear assessment. DHS possess the case files that would show the history of cases after the NMCs but this data is not readily available to the court and the resources required to make an adequate analysis of cases post-NMC would be substantial. As an aside, a question well worth asking in relation to the NMCs is the opposite of the above; that is, what is the impact of the Children's Court on the efficiency of the NMCs? Given the constraints of the Conference Unit to make stronger changes around document exchange, the trigger point at which cases are referred and the possibilities of making orders in the absence of those who fails to attend NMCs, this matter is well worth further reflection.

4.2 Recommendations

The recommendations outlined and discussed in this section respond to the final key evaluation question around identifying issues for improving and expanding the NMC program.

4.2.1 Document Exchange forms and processes need to be reviewed

A number of elements of this preparatory phase need to be reviewed to ensure that timely and relevant information exchange takes place and contributes to the effectiveness of the NMCs.

The form completed by legal representatives should be reviewed and input received from Victoria Legal Aid (VLA) and DHS about the structure and content. Suggestions from the evaluation forum included the possibility of the form discussing issues rather than orders and asking questions about what families might be prepared to do and consider rather than just asking them if they agree or disagree. This would enable the document to make a more substantial contribution to focusing on the key issues that need to be addressed at the NMC. At times, the document exchange forms have been completed by legal representatives at the booking point. While document exchange is required seven days before the NMC there is no upper limit to when they can be submitted. This practice may be used to ensure that at least some information is exchanged given the difficulties in contacting some clients between the booking and NMC dates and getting updates on issues and instructions. But it does mean that only very basic information gets exchanged and clients may not be very prepared for the NMC.

The time between booking the NMC and the NMC should also be reviewed to explore the option of providing more time for legal representatives to consult with clients, get instructions and brief clients on the NMCs and DHS staff to engage with families and prepare documents. Feedback from the evaluation forum pointed to the difficulties DHS staff may sometimes encounter in terms of case

management if the case is referred at an early point (in terms of mentions) with only a small number of weeks before the NMC is booked to take place.

Greater clarity on the responsibility of document exchange between DHS staff and CPLOs would make exchange clearer. The idea of a central point for exchange might also assist consistency and provide legal representatives with a clear point of reference in relation to where to send documents. The role of the Court in strengthening compliance should be further explored if late document exchange continues to be an issue.

4.2.2 Diverse initiatives are required to reduce the level of cancellations

Cancellations are a complex issue and there is no one recommendation that would make a clear impact. Rather, a number of initiatives are highlighted here that would address some of the underlying factors identifying as leading to cancellations.

Families are not present at the booking of the NMC and therefore cannot give input into what days and times (am or pm) might suit them best. Given that they are the parties most clearly responsible for cancellations on the day, the priority of suitable dates and days should take their views more into account.

Feedback at the evaluation forum also highlighted the need to ensure that legal representatives are fully 'on board' with the NMCs and can clearly communicate the importance of the NMC to their clients. If they are not supportive of the process, their clients may not be as determined and committed to attend the NMC as they otherwise might. Ongoing training and discussions with legal practitioners will be required to explore the best approaches to strengthening their commitment to the NMC program and look at ways to best enable them to prepare their clients.

Preparing brochures and flyers for families about the NMCs is also an approach raised at the Evaluation Forum and this idea is worth further exploration. This should be a short document in plain English preferably with images of what an NMC looks like and some comments from families expressing their views on positive experiences of the NMCs. This could be one more 'tool' to deploy (via DHS, legal representatives, intake process) to ensure families are well informed, less wary, and more likely to attend and participate in the NMC process.

The Conference Unit continue to trial new initiatives such as SMS-ing families to remind them of the NMCs and convenors undertaking risk assessments and engaging with families from the initial stages.

Another potential response is for the courts to strengthen the tone of registrar letters sent to clients when they do not appear at NMCs and set more stringent consequences for their failure to appear. One potential option that was raised at the evaluation forum was to give families a certain number of opportunities to attend an NMC after which orders will be made in their absence.

4.2.3 The second mention 'trigger point' should be reviewed

The Boston Consulting Group report⁸ recommended that the third mention be the trigger point for referring cases to NMCs. Currently, the preferred 'trigger point' implemented by the court is the second mention. The evidence so far indicates that in terms of outcomes, more settlements and fewer contests are emerging from those NMCs referred after the third and fourth mentions.

12% of cases are being referred to NMCs after the first mention and this should be reviewed as a high portion of these cases are being booked off to contest (28%). Additionally, 18% of cases going to NMCs after the second mention are being booked off to contest. Given the feedback from DHS

⁸ Boston Consulting Group, Child Protection Proceedings Taskforce: Background Materials 19th February 2010

staff about the need for time to engage with families and establish some sort of rapport and dialogue, it may be more effective and sustainable to look at the ‘trigger point’ as being the third mention (perhaps with greater time allowed between booking and the NMC).

The fourth mention could also be considered but cases going to NMCs at this point have a higher cancellation rate than those going after the third (30% compared to 25%). An important point to consider is the differences in cost between cancellations and contests being booked and therefore what balance is the best use of resources and which of the two can be more easily addressed. For example, NMCs at the fourth mention have a cancellation rate approximately double that of those at the second mention (30% compared to 16%); while those NMCs at the second mention have a rate of being booked to contest three times that of those NMCs referred after the fourth mention (6% compared to 18%). If cancellation rates can be addressed, the point at which most NMCs are getting settlements is after the fourth mention. One aspect of this is that the courts view on what cases are appropriate needs to be clearer about what the NMC is expected to achieve – that is, not only about full settlements.

At the same time, this would also add to the time taken for the application as by the fourth mention, most have been in the court process for at least three months. The risks in delaying a potential resolution by delaying the trigger point needs to be balanced with the potential for any additional time to provide a better opportunity for an application to settle (and also to be finalised) at the NMC.

4.2.4 A holistic approach is needed to review and improve the NMC program

What was made clear at the Evaluation Forum (December 2011) was that many of the challenges facing the NMCs are inter-related and therefore a change in one area can influence other aspects of the process or model. As such, changes to the NMCs will require well planned initiatives with influence on multiple fronts. This is particularly so for the topics informing the first three recommendations here as preparation, cancellations and ‘trigger point’ are all connected and should be approached in a holistic manner rather than as separate issues. Changing one element of the NMCs in isolation could impact on other parts and therefore changes require input from all key stakeholders to ensure the bigger picture is focused on and changes made in one area do not negatively impact on other areas.

For example, some DHS staff expressed concerns around the balance between getting cases to NMCs as soon as practicable and issues around DHS staffing, case development, and the time available to have established contact and/or relationships with clients. These points potentially have a bearing on family attendance rates and the extent to which they are prepared to discuss and negotiate on the issues being addressed on the day. While there was evidence that relationships between families and DHS staff have been improved through the NMC process, an initial relationship needs to have been established before the NMC to provide a more solid basis for discussions.

Also, the short period between booking and holding the NMC may also mean that the document exchange process is taking place only 2 weeks after the court’s referral to the NMC which can also prove challenging for legal representatives to contact and adequately prepare their clients. This has impacted not only on the quality of information in the document exchange but potentially on clients’ willingness to attend and participate.

Further discussions between the courts, the Conference Unit, VLA and DHS staff and management would provide important input around preparation, the point at which cases are sent to NMCs, and any changes to the time allocated between booking and holding the NMCs. Given the success of the Evaluation Forum conducted in December 2011 – and the sharing of views and the productive dialogue that took place between a wide range of stakeholders – an annual reflection process should

be undertaken to manage the development of NMCs and ensure that experiences, views and ideas from all key stakeholders can come together to continue to improve and enhance the NMC model.

4.2.5 Continuing to evolve the NMC process will contribute to more efficient and effective use of time.

Overall, the eight step model is working well and the Conference Unit is seeking to enhance and modify the model in places where appropriate.

The strengths and issues element of the model should be reviewed to explore ways of ensuring this step is a positive initial point for the discussions and that concerns over the ways that issues are presented are addressed. Some feedback indicates that alternative approaches are already being explored in relation to this issue.

While no two facilitators are alike, it would be beneficial for both the shared learning of the convenors themselves and for the development of a consistent team approach, for all convenors to have a better shared understanding of how they run the NMCs and what is 'negotiable' in terms of flexibility in the model and what is not.

Another point that might be addressed in terms of the duration of the NMC is the process that takes place after the NMC itself and the requirement for the parties to return to court to have the outcomes signed off by the Magistrate. This process should be reviewed as part of the ongoing improvement of the model to ensure that the additional time required to return to court (which is greater for those NMCs held off site) is the most efficient and effective way of completing the NMC process.

The delayed move off-site has been frustrating for staff and has also impacted on the NMCs in numerous ways – in particular it has created difficulties for the Conference Unit in terms of the processes developed for being off-site and has potentially impacted on cancellation rates and outcomes as the original plan to distance the NMCs from the court has not progressed as much as planned (e.g. by still having NMCs at the courts rather than mostly off-site).

The relatively informal nature of the NMCs could also be enhanced by additions as providing appropriate areas for children to play (so parents can bring children if they cannot access childcare), cups of coffee and tea for all parties and some snacks. As the entire process (including going back to court) can take over three hours, keeping all parties satisfied and the act of 'sharing a cuppa', could also be one way to keep parties focused and on track in their discussions.

4.2.6 CPLO staff present during NMCs should be a best practice goal

While resources will determine the extent to which CPLOs can attend all NMCs for their duration, this should be held to be the ultimate best practice goal. Further roll out of the NMCs will provide a challenge to the CPLO staff but there are clear benefits and overwhelming support for their presence to continue for the duration of the NMCs.

4.2.7 Enhancing NMCs for Aboriginal and Torres Strait Islander parties should be considered

Given the percentage of clients identifying as Aboriginal and Torres Strait Islanders is at 10% (3% of clients from Footscray; 17% of clients from Preston), the role of an indigenous convenor or liaison worker could be more fully explored to ensure engagement from indigenous clients is maximised and advice is available around relevant cultural protocols. This could be further enhanced through additions to the environment of the NMCs via, for example, visual references to Aboriginal culture and recognition of country and the traditional owners.

4.2.8 The Conference Unit will require support for data collection processes and intake

The current database will require a review at the end of this evaluation period. This will ensure that any glitches and anomalies are rectified and that only relevant data is being collected that is achievable within the current level of resourcing.

If one team member at the Conference Unit is to be responsible for inputting data, managing the spreadsheet and producing reports, then capacity building options should be looked at for that employee to ensure that their IT skills are able to undertake the role and use the data in an ongoing way.

The spread of tasks across the Conference Unit appears to be working well at the moment but as roll out continues these processes will need to be closely monitored to ensure the team is able to cover all of their tasks and remain effective at their roles.

4.2.9 Family feedback remains a challenge and further options will need to be explored if these views are to be captured in the future

Consulting with families proved to be a frustrating and difficult process during the evaluation process and one that mirrors the frustrations and challenges pointed out by the Conference Unit's intake staff, DHS staff and legal representatives in contacting and engaging families in this area. There are numerous factors that impeded consultation with families including privacy issues, the relevance of the evaluation for families, and the complexity of asking them to reflect on a courts process. When this is combined with the challenges of obtaining informed consent, simply getting in contact with people, and trying to engage a clientele in an evaluation (when some struggle to attend NMCs and adhere to agreements when the custody of their children is at stake), then the challenges of client consultation are substantial.

Additionally, the resources required to undertake consultation with this extremely hard-to-reach client group would be substantial and any future attempts will need to assess the quality of feedback obtained with the resources allocated. The minimal feedback received by the evaluation team was unhelpful as it did not provide any detailed comments on the NMC process itself.

If family feedback is to be sought in the future this may require systems for obtaining informed consent for evaluation to be incorporated into NMC processes and documents from the outset. Seeking written feedback proved to be elusive and obtaining verbal feedback equally as difficult. Further consultation with experienced DHS staff could shed further light on approaches and tools that could be more successful. Third parties, such as counsellors or other service providers could also be consulted about ways to best consult with this clientele.