



GUIDELINES

for

CONCILIATION CONFERENCES

Effective from 1 March 2016

1. INTRODUCTION AND PURPOSE

A conciliation conference is intended to facilitate the early resolution of applications through a non-adversarial process.

Sections 217 – 227 of the *Children, Youth and Families Act 2005* (the Act) govern the operation of conciliation conferences in the Children's Court of Victoria.

Section 217(1) of the Act provides that the Family Division of the Children's Court may order any protection application made to the Family Division be referred for a conciliation conference

Section 217(2) provides that the purpose of a conciliation conference is to give the parties to the application an opportunity to agree or advise on the action that should be taken in the best interests of the child. A conciliation conference is therefore an exercise in negotiation and joint problem solving. It establishes a process that enables parties to an application to meet together in an informal environment facilitated by an independent convenor.

Section 220 provides that a conciliation conference must be conducted in accordance with any Guidelines issued from time to time by the Court.

These Guidelines apply to applications listed for conciliation conferences in the Children's Court throughout the State of Victoria after 1 March, 2016.

2. CONCILIATION CONFERENCE – PROCEDURAL MATTERS

2.1 *When a case will be listed for conciliation conference*

The Court will not order a conciliation conference in a case that appears likely to resolve expeditiously.

The Court recognises that, as a general principle, a conciliation conference should be held as early as possible in the proceedings in order to facilitate the early resolution of applications.

2.2 *Preliminary process and the role of the Conference Intake Officer*

If the parties agree a case is suitable for a conciliation conference, or the Court determines a case is suitable for a conciliation conference¹, all representatives of parties or, in the case of an unrepresented party, that party, must attend the registry counter and provide information as requested by the Conference Intake Officer including –

- the parties' addresses and telephone numbers;
- any special requirements (e.g. interpreters, or specific dates or times when a party may, for good reason, be unavailable to attend a Conciliation Conference);
- details of any existing orders under the *Family Violence Prevention Act 2008*;
- any safety or capacity issues that may be relevant to the conduct of a Conciliation Conference or format of a Conciliation Conference;
- whether there are any persons mentioned in s.222(2) of the Act who will seek the permission of the convenor to attend a Conciliation Conference;

¹ If parties do not agree about the appropriateness of a Conciliation Conference in the particular case, a judicial officer will determine the issue. If the judicial officer is concerned about a risk issue, the case may be adjourned for seven days to enable the CIO to conduct a detailed risk assessment. The results of the risk assessment will be confidential and used by the judicial officer to help determine the suitability of the case for Conciliation Conference and, if suitable, the format of the Conciliation Conference.

- in the case involving a represented child, whether the child will participate in the Conciliation Conference;
- if the child resides in out of home care under the current protection as defined by Section 3 of the Act; and
- if an Independent Children’s Lawyer has been appointed.
- Service of the Application on all parties.
- Dispensation of Service upon a party under Section 531 of the Act

The Conference Intake Officer will list the case for a Conciliation Conference to be held at the earliest available date.

2.3 Risk Assessment

The Conference Intake Officer will conduct a risk assessment and determine the most appropriate format for the conference. If the Conference Intake Officer determines there is a particular reason why the case may be unsuitable for a conciliation conference, the Conference Intake Officer must advise the parties that the matter will be listed for mention before a judicial officer for further determination. The conciliation conference will be vacated and the judicial officer will make an order about the future management of the case.

2.4 Information Exchange

When a case is listed for an initial or subsequent Conciliation Conference:-

- DHHS must file with the Court and serve on the legal representatives the “Conciliation Conference addendum report” at least 10 days (but no more than 14 days) prior to the date fixed for the Conciliation Conference. (The relevant form of the document is at *Attachment A*). It is also available on the Children’s Court website. The document may be lodged electronically by email or fax; and
- Legal practitioners representing other parties must file with Court and serve on the other parties or their legal representatives the “Information Exchange document” at least 7 days (but no more than 14 days) prior to the date fixed for the Conciliation Conference. (The relevant form of the document is at *Attachment B*). It is also available on the Children’s Court website. The document may be lodged electronically by email or fax. The document at *Attachment C* is the relevant form to be used by legal practitioners representing children or young people on best interests pursuant to *Section 524(4) Children, Youth and Families Act 2005*; and
- The Court will provide unrepresented parties with “Information Exchange document” for completion; and if returned will file and serve the “Information Exchange document” on all other parties or their legal representatives.

Legal practitioners must comply with these Information Exchange provisions even in the absence of DHHS compliance.

All parties, wherever possible, must advise the Court Conference Unit and all other parties, prior to the Conciliation Conference, of any change in circumstances that have occurred since the original filing and exchange of information.

The judicial officer who adjourns the case for a Conciliation Conference will endorse the Information Exchange requirements as an order on the Court file. If the Court order or these Guidelines are not complied with, the convenor may vacate the Conciliation Conference and list the matter before a judicial officer for determination.

If the "Information Exchange document" filed by a party, does not contain the details required by these Guidelines, the Conference Unit will reject the document. The party will be required to refile the Information Exchange Document within the time frames listed.

All Information Exchange documents will form part of the Court file and are not confidential.

2.5 Some general matters

A Convenor conducting a Conciliation Conference has broad discretion to determine an appropriate process for the conduct of the conciliation conference.

All parties and/or their legal representatives must attend a Conciliation Conference in person, unless exceptional circumstances exist, in which case a convenor may allow participation by video or telephone conference link.

3. ROLE OF THE CONVENOR IN A CONCILIATION CONFERENCE

The Convenor is an independent chairperson acting with the authority of the Court. In that capacity, the Convenor shall be responsible for controlling the proceedings and ensuring that each participant has the opportunity to participate fully.

4. RESPONSIBILITIES OF ALL PARTICIPANTS IN A CONCILIATION CONFERENCE

All participants in a Conciliation Conference must:

- respect the authority of the Convenor;
- respect the roles and responsibilities of all other participants in a Conciliation Conference;
- consider the options for resolving the protective concerns.

If people do not attend a Conciliation Conference with an open mind or a flexible attitude, the Conciliation Conference will not be an effective process.

5. ROLE OF LAWYERS IN A CONCILIATION CONFERENCE

In a Conciliation Conference, lawyers adopt a non-adversarial role. The role of the lawyer is to represent a client in facilitated negotiations that take place in a problem-solving environment.

Lawyers appearing as agent for another law firm or Counsel briefed to appear at a Conciliation Conference must hold current instructions from the client and be authorised to resolve matters at the CC.

All legal representatives must receive instructions prior to the commencement time of the Conference (9.30am or 1.30pm) so as not to delay the commencement of the conciliation conference.

In addition to Section 4 of the Guidelines, a lawyer must:

- have regard to the Guidelines issued by the Court for conducting Conciliation Conferences;
- be available for the conference at the time arranged and for the whole of the conference.
- encourage the client to directly participate and contribute to the process;

- endeavour to manage the behaviour of their client if required.
- reality test any proposals and provides realistic advice on settlement options.

6. ROLE OF CHILD PROTECTION PRACTITIONERS IN A CONCILIATION CONFERENCE

In a Conciliation Conference, child protection practitioners adopt a non-adversarial role. The role of the child protection practitioner is to promote the child's safety and best interests through facilitated negotiations that take place in a problem solving environment.

In addition to Section 4 of the Guidelines, the child protection practitioner:

- has regard to the Guidelines issued by the Court for conducting Conciliation Conferences;
- attends the conference well prepared and clear about the matters that need to be discussed at the Conciliation Conference;
- maintains flexibility in decision making in response to proposals put by or on behalf of family members.

DHHS at a Conciliation Conference must:

- Be represented by a lawyer or a person authorised in writing by the President of the Children's Court to appear on behalf of DHHS.

DHHS must have a person present at a Conciliation Conference who:

- has personal knowledge of the matter;
- has met family members prior to the Conciliation Conference;
- has the necessary authority to negotiate a range of possible outcomes and make decisions that may lead to settlement.

7. ROLE OF FAMILY AND COMMUNITY MEMBERS IN A CONCILIATION CONFERENCE

Family or community members may, at the discretion of the Convenor, contribute to the resolution of protective concerns or act as a support to the child or family. They are not to act as an advocate for one party against another.

If a dispute arises on the day of a Conciliation Conference as to who should attend the conference, in addition to those people required to attend under the Act and ordered to attend by the Court, the Convenor(s) has the final authority to determine any additional attendees under *Section 222(7)* of the Act.

8. CONCILIATION CONFERENCE REPORT

The convenor will provide to the Court a written report of the conclusion reached at the Conciliation Conference. The form for the Conciliation Conference report is at *Attachment F*. The minutes of proposed orders agreed to by the parties should accompany the report.

CONCILIATION CONFERENCE - ADDENDUM REPORT

Name(s) of the child(ren) who are the subject(s) of this Conference:

Date of the Conference:

Application type:

Order sought:

Name of the person completing this Addendum Report:

Name of the protective worker attending Conciliation Conference:

Why are DHHS concerned about the child(ren) in this application?

What is already happening to keep the child(ren) safe and well looked after?

What else needs to happen to keep the child(ren) safe and well looked after?

List the reason/s for changed disposition (if any) and conditions (if any):

What is the new recommended disposition and conditions (if applicable)?

Signature of Report Writer:	Date:
Signature of Supervisor:	Date:

Children, Youth & Families Act 2005

**Conciliation Conferences: Information Exchange Document
to be completed by lawyers representing
children, parents & other joined parties**

Name(s) of subject child(ren) (include date/s of birth):

Date of Conciliation Conference:

Filed on behalf of:

Who is the:

Prepared by:

Date of document:

Date of last instructions:

Legal representative:

Date of DHHS Addendum Report provided:

THE APPLICATION & DISPOSITION

Application type:

Order sought by DHHS (incl length):

Order sought by client (incl length):

For lawyers representing a parent: Is there an alternative proposal to that proposed by DHHS which your client says will ensure their child(ren)'s ongoing safety? Yes No

Please specify: e.g. child to live with mother, and MGM to provide fortnightly respite care

PROOF OF THE APPLICATION

Grounds of application: (a) (b) (c) (d) (e) (f) N/A

Grounds disputed: (a) (b) (c) (d) (e) (f) N/A

If an Application to Breach, is the breach conceded? Yes No

Is there a substantive factual dispute relating to proof of the application?

Yes No

Please specify: *e.g. client denies hitting child*

Are there matters your client wishes to raise in response to the concerns detailed by DHHS?

Yes No

Please specify:

CONDITIONS OF ANY PROPOSED ORDER

Is there agreement to all conditions proposed by DHHS? Yes No

Identify the issue(s):

Contact condition

frequency supervision

Residence condition

Screens condition

necessity frequency/duration

Psychiatric assessment condition

Cognitive/neuropsychological assessment condition

Risk assessment

Drug and/or alcohol assessment

Parenting assessment

Any prohibitive condition *e.g. X must not live with Y*

Other

Please specify: *e.g. client seeking three times weekly minimum contact regime*

If client proposing contact supervisor, has DHHS assessed this person. Yes No

Are there additional conditions sought by your client?

Yes No

Please specify: e.g. access condition in respect of an extended family member

ADDITIONAL MATTERS

Are there any additional matters your client wishes to raise?

Yes No

CHILDREN, YOUTH & FAMILIES ACT 2005

**Conciliation Conferences: Information Exchange Document
to be completed by best interests lawyers appointed under
s524(4) of the *Children, Youth and Families Act***

Name(s) of subject child(ren) (include date/s of birth):

Date of Conference:

Filed on behalf of the child(ren):

Prepared by:

Date of document:

Legal representative:

Date of DHHS Addendum Report provided:

THE APPLICATION & DISPOSITION

Application type:

Order sought by DHHS (incl length):

Order recommended by s524(4) lawyer:

Is there an alternative proposal to that proposed by DHHS which will ensure the child(ren)'s ongoing safety? Yes No

Please specify: *e.g. child to live with mother, and MGM to provide fortnightly respite care*

Do you require further information from DHHS or another party to make a recommendation regarding disposition ? Yes No

Please specify:

PROOF OF THE APPLICATION

Grounds of application: (a) (b) (c) (d) (e) (f) N/A

Grounds recommended: (a) (b) (c) (d) (e) (f) N/A

Is a finding of a breach of the order recommended? Yes No

Do you require further information from DHHS or another party to make a recommendation regarding proof or breach? Yes No

Please specify:

CONDITIONS OF ANY PROPOSED ORDER

Is there agreement to all conditions proposed by DHHS? Yes No

Identify the issue(s):

Contact condition frequency supervision

Residence condition

Screens condition necessity frequency/duration

Psychiatric assessment condition

Cognitive/neuropsychological assessment condition

Risk assessment

Drug and/or alcohol assessment

Parenting assessment

Any prohibitive condition e.g. *X must not live with Y*

Other

Please specify: eg. reunification schedule is recommended

If proposing a contact supervisor, has DHS assessed this person. Yes No

Are there additional conditions recommended Yes No

Please specify: e.g. access condition in respect of an extended family member

ADDITIONAL MATTERS

Are there any additional matters relating to the child's best interests that need to be discussed? Yes No

Please specify:

Children, Youth & Families Act 2005

**Conciliation Conferences: Information Exchange Document
to be completed by self-represented parties**

Date of Conciliation Conference:
Name(s) of subject child(ren) (include date/s of birth):

Your name:
Your relationship to the child(ren):
Name(s) of person(s) who completed this form:
Date of document:

THE DHHS REPORT

Have you read the DHHS report? Yes No
Are there things in the report you say are incorrect? Yes No
What are they?

Are there things the report does not say that are important to you e.g. positive things about your family? Yes No
What are they?

If what DHHS says is correct, what needs to happen to make sure your child(ren) are safe?

THE ORDER AND CONDITIONS

Do you understand the order that DHHS are asking for? Yes No

Do you agree with the order/length of the order? Yes No

Are there conditions on the order that DHHS are asking for? Yes No

If yes, do you think all conditions need to be there? Yes No

What conditions do you think don't need to be there?

Are there any conditions you would change? e.g. would you like more contact than the report recommends or for a person other than a DHHS representative to supervise your contact?

Are there people you would like DHHS to assess in relation to caring for your child(ren) or supervising contact? Yes No

If yes, please write down their names.