Alternative dispute resolution initiatives in the care and protection jurisdiction of the NSW Children’s Court

Anthony Morgan, Hayley Boxall, Kiptoo Terer & Dr Nathan Harris

Child Aware Approaches Conference
11-12 April 2013
ADR in the care and protection jurisdiction of the NSW Children’s Court

• Provides opportunity for parties involved in care proceedings to meet and discuss issues relevant to application:
  – Includes parents and their lawyer, other family members or support persons, children and/or their lawyer and the Community Service caseworker, Manager Casework and their lawyer

• Facilitated by a neutral third party
• Less formal than a court hearing
• Parents and family members encouraged to speak for the themselves
• Professionals encouraged to speak directly to the family and avoid using jargon
• Conferences held outside of the courtroom
New model of Dispute Resolution Conference (DRC)

• Operated in all NSW Children’s Courts (except Bidura)
• Convened by Children’s Registrar
• Conciliation model
• Referred at any stage in the process
• 2 hours per conference
• 1,096 conferences during the evaluation period

Legal Aid Pilot

• Limited to matters referred from the Bidura Children’s Court
• Convened by mediator
• Mediation model
• Post-establishment only
• 3 hours per conference
• 84 conferences during the evaluation period
Evaluation methodology

- Conference observations
- Interviews with parents and family members
- Consultation with key stakeholders
- Post-conference report data
- Data extracted from court files
- Post-conference surveys
- Review of good practice
- Cost-savings comparison

Process and outcome evaluation
Conference resolution rates and agreement on final orders (%)

- Issues in dispute narrowed or resolved:
  - DRCs: 80%
  - Legal Aid Pilot: 82%

- Agreement reached on final orders:
  - DRCs: 37%
  - Legal Aid Pilot: 37%
Satisfaction with the conference process and outcomes

- High rates of satisfaction with the conference process among families and professionals:
  - Treated fairly by impartial facilitators
  - Other people listened to what they (or their client) had to say
  - Happy with how the conference was run
  - Able to contribute to the end result

- Level of satisfaction with outcomes lower (although the majority still satisfied) and varied between participants

- Participants still felt the conference was useful, even if they weren’t happy with the outcome
### Regression model predicting mothers' satisfaction with outcomes from conference

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>Std error</th>
<th>Beta</th>
<th>t</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understanding of what was going to happen at the conference</td>
<td>0.030</td>
<td>0.071</td>
<td>0.019</td>
<td>0.417</td>
<td>0.677</td>
</tr>
<tr>
<td>Apprehension about participating in the conference</td>
<td>0.004</td>
<td>0.036</td>
<td>0.005</td>
<td>0.119</td>
<td>0.906</td>
</tr>
<tr>
<td>Satisfaction with the conference process</td>
<td>0.608</td>
<td>0.088</td>
<td>0.366</td>
<td>6.905</td>
<td>0.000</td>
</tr>
<tr>
<td><strong>Perception of whether Community Services gave them a fair go</strong></td>
<td>0.360</td>
<td>0.034</td>
<td>0.472</td>
<td>10.440</td>
<td>0.000</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.236</td>
<td>0.337</td>
<td>-0.701</td>
<td>0.484</td>
<td></td>
</tr>
<tr>
<td>R2</td>
<td>0.556</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Regression model predicting fathers' satisfaction with outcomes from conference

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>Std error</th>
<th>Beta</th>
<th>t</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understanding of what was going to happen at the conference</td>
<td>0.094</td>
<td>0.070</td>
<td>0.066</td>
<td>1.356</td>
<td>0.177</td>
</tr>
<tr>
<td>Apprehension about participating in the conference</td>
<td>0.048</td>
<td>0.041</td>
<td>0.058</td>
<td>1.174</td>
<td>0.242</td>
</tr>
<tr>
<td>Satisfaction with the conference process</td>
<td>0.262</td>
<td>0.103</td>
<td>0.190</td>
<td>2.545</td>
<td>0.012</td>
</tr>
<tr>
<td><strong>Perception of whether Community Services gave them a fair go</strong></td>
<td>0.448</td>
<td>0.050</td>
<td>0.626</td>
<td>9.012</td>
<td>0.000</td>
</tr>
<tr>
<td>Constant</td>
<td>0.521</td>
<td>0.398</td>
<td></td>
<td>1.308</td>
<td>0.192</td>
</tr>
<tr>
<td>R2</td>
<td>0.610</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Participants who agreed or strongly agreed with the statement ‘The relationship between the family and Community Services would improve post-conference’ (%)
### Median number of days to finalisation of matter and to placement hearing

<table>
<thead>
<tr>
<th></th>
<th>Parramatta, Broadmeadow, Albury and Wagga Children's Courts</th>
<th>Bidura Children's Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days to finalisation</td>
<td>166 (ADR) 189 (Non-ADR)</td>
<td>179 (ADR) 218 (Non-ADR)</td>
</tr>
<tr>
<td>Days to placement hearing</td>
<td>230 (ADR) 217.5 (Non-ADR)</td>
<td>185 (ADR) 254 (Non-ADR)</td>
</tr>
</tbody>
</table>
Matters involving a hearing (%)

<table>
<thead>
<tr>
<th></th>
<th>ADR</th>
<th>Non-ADR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parramatta, Broadmeadow, Albury and Wagga Children's Courts</td>
<td>24</td>
<td>39</td>
</tr>
<tr>
<td>Placement hearing</td>
<td>21</td>
<td>35</td>
</tr>
<tr>
<td>Bidura Children's Court</td>
<td>42</td>
<td>39</td>
</tr>
<tr>
<td>Placement hearing</td>
<td>39</td>
<td>34</td>
</tr>
</tbody>
</table>
No measurable impact on…

- Hearing length
- Vacated hearings
- Matters resolved on the basis of consent
- Care plan agreement rates
- Placement outcomes
Diff. in avg. cost per matter (ADR compared to non-ADR matters) (%)

Parramatta, Broadmeadow, Albury and Wagga Children's Courts

Bidura Children's Court

Model 1: Conference and hearing time and chair preparation time

Model 2: Conference and hearing time, chair preparation time (conference), lump sum Legal Aid payments (conference and hearing)

Model 3: Conference and hearing time, all parties preparation time (conference), lump sum Legal Aid payments (conference and hearing)
Conclusion

• Evidence supports continued involvement of ADR as integral feature of care and protection proceedings

• Recommendations to further enhance the effectiveness of ADR in the Children’s Court:
  – Continue to build and maintain support for the programs and the capacity of professionals involved
  – Further refine the ADR models based on the evaluation findings
  – Ensure the sustainability of both models of ADR
Alternative dispute resolution initiatives in the care and protection jurisdiction of the NSW Children’s Court

Anthony Morgan, Hayley Boxall, Kiptoo Terer & Dr Nathan Harris
Child Aware Approaches Conference
11-12 April 2013