



**Case Assessment Conferences
in the
Family Court of Western Australia:
A Formative Evaluation**

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Case Assessment Conferences in the Family Court of Western Australia: A Formative Evaluation

Executive Summary

Case Assessment Conferences (CACs) were introduced as the first formal court event in the Family Court of Western Australia (FCWA) in July 2004. The FCWA model incorporated lessons learned from the Columbus Pilot conducted during 2001-2002, especially the value of collaborative interdisciplinary case management, the need to become more client-focussed, and the need to include risk screening and assessment as a central element in the process.

The FCWA CAC Process

A working party under the joint leadership of the Acting Principal Registrar and the Director of Court Counselling developed the various internal processes together with the necessary protocols, sector training, and briefings required to implement the CAC process. The CAC model that evolved included three phases:

- The screening and assessment phase of the conference [conducted by a counsellor];
- The negotiation phase [also conducted by a counsellor] where parties could present their position and concerns in a safe and supported environment; and
- The procedural hearing [conducted by the registrar] that incorporated the ability to make Consent Orders without a further court attendance and to have input from a judicial officer as to the likely progress should the matter proceed further – a ‘reality check’.

The primary focus of the CAC was risk screening, assessment, and case management. Although it is possible that couples might reach agreements, this was seen as a secondary benefit rather than the central purpose.

A total of two hours was allowed for each CAC. Conference proceedings were privileged (not admissible in other court proceedings), except for threats of harm or child abuse issues. The screening and assessment phase with the counsellor took about 30 minutes. The negotiation phase took about an hour and the final Procedural Hearing about 15 minutes. In matters where abuse was identified, the registrar could refer the case for individualised case management and issue instructions regarding notifications of child abuse or risk. In some circumstances, the parties could be rescheduled for a follow-up conference with the counsellor.

The evaluation of CAC was incorporated in the project planning from the outset. The evaluation was funded by an Edith Cowan University Industry Collaborative Grant with FCWA, the Child Support Agency, Anglicare(WA), Relationships Australia, and Centrecare as project partners providing a combination of cash and ‘in kind’ support.

Aims

The aims of this evaluation project were to assess the capacity of the CAC process:

- as an early intervention case assessment procedure that included a screening for risk factors in the family, and focused on achieving best outcomes for children;
- as a referral procedure that identified the practical and emotional obstructions to reaching agreement and recommended strategies to assist parties in finding resolutions to their disputes;
- as a case management system that:
 - reduced the number of cases that took a litigation pathway in FCWA;
 - reduced the number of court procedures;
 - reduced time taken to settle disputes;
 - increased client satisfaction;
 - enabled both government and non-government service providers to develop programs and services that are coordinated, supportive, and integrated with the Court.

Methodology

The methodological approach examined the CAC procedure in terms of its context, inputs, processes, and outcomes as they affect the key stakeholders (court personnel – registrars and counsellors, legal practitioners, government and non-government service providers, and clients. Data included in-depth interviews, focus groups, appraisal of documents, and observations of CACs. Quantitative data included analysis of statistical records, as well as comparative cost/outcome analysis.

Study Populations

There were five populations in this evaluation:

- a sample of 21 parents (10 mothers, 11 fathers) who had participated in a CAC;
- FCWA personnel: registrars (5) and counsellors (11);
- legal practitioners (12) whose clients have participated in a CAC; and
- key personnel (13) from the various agencies that support the court.

A sample of 52 CAC cases from the first six months of 2005 was compared with a similar number of ‘first hearing’ matters from the FCWA’s General List during the same time in 2004 (before the introduction of CAC). This fifth sample effectively became a ‘Control Group’ for the evaluation. In order to provide some comparison in terms of demographic profiles, litigation experiences, and outcomes, the researchers also drew on the data from the Control Group (n=62) in the Columbus Pilot evaluation project (as those clients experienced the same court processes as the CAC Control Group) (Murphy & Pike, 2005).

Results

Statistical Data

The statistical data established that, when compared with Australian Bureau of Statistics (ABS) data, the clients making child-related applications in FCWA are not typical of the general Australian population of couples with children. The clients were, on average, almost 10 years younger than the general divorcing population and the relationships are

about 7 years shorter than the national average for divorcing couples (although no such data is available for couples separating from de facto relationships).

There were two significant features of this client population:

- More than 40% of couples litigating about children in FCWA live in de facto relationships (as opposed to 9% of the general population);
- More than 60% of couples are re-partnered families (stepfamilies) compared with 10% in the general population.

The FCWA client group also demonstrates many indicators of lower socio-economic status, poverty, social disadvantage, and social exclusion.

The introduction of CAC had a major impact on the role and workload of counsellors within FCWA. Over the first year of a typical child-related matter that had a CAC as the first court event, the counsellors spent, on average, over 3.1 hours with the parties (as opposed to about 1-1.5 hours in the pre-CAC system (the CAC Control Group)). This represents more than a 100% increase in counsellor input per case before additional input (such as follow-up counselling conferences, writing case notes, or making and monitoring referrals to external agencies) is considered. During a similar twelve-month timeframe, the judicial officers' involvement with each CAC matter increased from about 1.8 hours to about 3.0 hours – an increase of about 60%.

The additional input is reflected in some very positive outcomes:

- A 20% reduction in the time that a matter is in the system,
- A 30% reduction in the number of court events,
- A 17% reduction in the time taken before a matter has a Conciliation Conference,
- A 19% reduction in the number of matters requiring a Conciliation Conference,
- A 50% increase in settlement at an early stage (before a Conciliation Conference),
- **An overall 70% settlement rate within a 23 week timeframe.**

Feedback from the professional stakeholders (registrars, counsellors, lawyers, and agency personnel) not only confirmed the positive outcomes indicated in the statistical data but also the increased interdisciplinary collaboration that the CAC process has promoted.

Registrars

There was general consensus among the five registrars interviewed that CAC:

- produces better outcomes for most clients;
- is less stressful and less confrontational for the clients than formal litigation;
- focuses parents on the children's issues and wellbeing rather than the adult conflict;
- promotes better identification of issues and more effective outcomes;
- is a better forum for self-represented litigants (SRLs);
- has led to changed attitudes about the role of the court;
- increased early settlement rates;
- is a better use of judicial resources;
- led to a reduction in the number of cases being managed in the General List (GL), with better outcomes for those clients; and
- had developed as anticipated and, in some instances, exceeded their expectations.

In terms of improving the CAC process, the registrars suggested:

- fewer conferences per day would enable better service provision;
- sufficient resources (funding) need to be provided; and

- compliance with Pre-Action Procedures (PAP) needs to be enforced.

Notwithstanding the high numbers of stepparents (as well as grandparents) in this client population, there was general agreement among the registrars that developing strategies for including these ‘peripheral’ parties in the CAC process remains problematic.

Counsellors

The ten counsellors interviewed were also generally very positive about the CAC process, their collaborative relationships with both the registrars and lawyers, and the results that were being obtained. They particularly noted:

- the value of procedural guidelines for quality assurance and standardisation of practice;
- the time limitations precluded in-depth exploration and discussion of complex emotional issues;
- few clients knew what to expect when they came to Court;
- having lawyers in the CAC process had proved to be very beneficial;
- the on-site Legal Aid office is an invaluable resource; and
- clients come to the CAC needing more information about FCWA processes, an opportunity to tell their story, a greater understanding of what the children are experiencing, more support, and some indication of the reality of their position.

The counsellors identified a comprehensive skill-set that they draw on either consciously or subconsciously during the CAC process. They also raised a number of issues that new colleagues should be made aware of during their induction into working at FCWA.

Lawyers

The twelve lawyers universally supported the CAC process, especially in children’s matters, to assist in identifying issues at an early stage. They considered the informality of the process and involvement of the counsellor together with the opportunity for clients to put their side of the story as core elements in assisting parents to clarify matters and, in many cases, move them towards some form of agreement without the matter proceeding into the more formal litigation process.

The lawyers considered that CAC was facilitating many earlier settlements and, even if matters did not settle at the CAC, the process stimulated more positive thinking and many clients subsequently settled before they got enmeshed in the litigation process.

In considering the various facets of CACs, the lawyers offered the following observations:

- most clients just want a decision that will resolve their problem;
- the CAC is very useful in promoting a mediated outcome, although there was still an element of needing to protect their client’s legal interest, especially if there were extreme proposals being presented for consideration;
- notwithstanding the acknowledged time constraints, it is essential for the registrars to be well prepared before the CAC; and
- having the registrars give the parents a more realistic expectation of possible outcomes is very powerful and very helpful.

Some of these lawyers admitted that they had been somewhat sceptical about the CAC process and its potential direction, but most reported that they were pleasantly surprised at the outcomes they had observed.

The lawyers agreed that the new family law system will impact on legal training. The lawyers raised, and endorsed, the idea that all law students interested in practicing family law should have both mediation and humanities units as part of their course.

Agency Personnel

The agency personnel indicated a need for agency staff to have detailed knowledge and understanding of the family law system, including:

- Family Court terminology, documentation, processes, and outcomes;
- the significance of Minutes of Consent;
- specific Family Court orders (such as Recovery or Discovery Orders);
- Orders from other jurisdictions (such as Restraining Orders);
- the implications of these various Orders for interactions between the parents, kinship networks, and with external agencies (such as schools or medical practitioners); and
- the interfaces between government departments and services (such as the Child Support Agency, Centrelink, Australian Taxation Office, the Department for Community Development, and the police).

The data established the need for an extensive and continuous training program for agency staff to promote understanding of the family law system. There is also a need for court counsellors to have a similar level of knowledge about the service agencies.

There is little evidence of collaborative practice among the various non-government service providers. This highlights the need for some form of sector management that facilitates coordinated research, knowledge sharing, program development, service delivery, and evaluation. Such an integrated sector could be linked by an interactive referral system to pass clients to various services within the overall family law system.

In general, the sector has the perception that the Family Court has the authority, the capacity, and the ability to coordinate both policy development and service integration within the family law sector. This misconception of the role of the Family Court needs to be addressed.

Professional Stakeholders: Summary

On the basis of the data from the professional stakeholders it is concluded that the Case Assessment Conference process has:

- produced a range of positive outcomes in terms of litigation profiles;
- promoted a great deal of interdisciplinary understanding and collaboration within both the Court and the legal community; and
- stimulated an emerging level of integration among the various government and non-government agencies in the wider family law network in Perth.

The Parents

The parents who provided feedback for this evaluation reported a number of common experiences, but the women and men interpreted the CAC process in quite different ways. Some of the common experiences were that:

- there was minimal delay in their application being listed for a CAC;
- the information letter provided by the court advising the CAC hearing is not easily understood in terms of the steps in the process, the aims, and possible outcomes;
- in cases where the parties had legal representation, the lawyers had explained the CAC process but this did not necessarily prepare the parents for the experience;

- the current potentially noisy and distressing public waiting facilities in the Court are not conducive to promoting negotiation;
- many of the clients could not distinguish between the counsellor and the registrar in the CAC, and found this confusing;
- in cases where there was a gender imbalance, the affected clients reported that they found this intimidating;
- almost all of the clients anticipated a decision at the CAC, and were frustrated when this did not occur;
- clients found the language and terminology of the Court and the CAC process difficult, sometimes too sophisticated, and legalistic;
- there was little appreciation of the risk assessment role of the CAC and, in many cases, what constitutes ‘risk’;
- there is a need for more emotional support during the separation process and in establishing post-separation parenting relationships ;
- there is a need for follow-up by the Court to see if agreements are working; and
- many parents are concerned about a new partner’s influence on the children.

While most of the mothers regarded the CAC as an opportunity to negotiate and resolve issues, many of the fathers saw it as a decision-making process. The men also appeared to need a more structured process to guide the discussions, including an agenda. None of the parents appreciated that the Family Court has no investigative capacity.

Most of the mothers were reluctant to involve their children in the formal elements of the separation process whereas the fathers felt that, in most cases, the children’s views should be included in the negotiation process. These views seem to be promoted and sustained by the misconceptions (‘urban myths’) that:

- at age 12 a child automatically has the right to choose the parent with whom they wish to live; and
- Final Orders are sacrosanct and, once pronounced, can neither be varied before a child turns 18 nor be challenged for at least 12 months.

The fathers also had difficulty understanding the implications of:

- the concept of ‘status quo’ in child-related disputes;
- the rationale of ‘primary care giver’ in considering child-related disputes; and
- the level of scrutiny that some fathers felt they were under.

Parents: Summary

Although almost all of the mothers and most of the fathers appreciated that the Family Court (and especially the counsellors and registrars) was trying to do something different to assist them to resolve their disputes without recourse to lengthy litigation, many felt that this had not yet achieved its full potential. There was general support for the less adversarial approach promoted within CAC (and now supported by the recently established Family Relationship Centre), and also a recognition that, in some cases, it is the formality of the Court that actually promotes the outcome.

The FCWA CAC Model Assessed

On the basis of the data our assessment is that the Case Assessment Conference process in the Family Court of Western Australia achieved the stated purposes to:

- (a) enable the person conducting the conference (counsellor) to assess risk;
- (b) enable the person conducting the conference (counsellor) to make recommendations about the appropriate future conduct of the case;
- (c) enable the parties to attempt to resolve the case, or any part of the case, by agreement; and
- (d) conduct a procedural hearing (registrar) as the end process to ensure due legal process of the matter.

In our assessment, the CAC process was:

- Effective as an early case assessment procedure that included a screening process of risk factors for all family members, and focused on achieving best outcomes for children;
- Effective as a referral procedure that identified the practical and emotional obstructions to reaching agreement, and recommended strategies to assist parties in finding resolutions to their disputes;
- An efficient case management system that:
 - reduced the number of cases that took a litigation pathway in the Family Court of Western Australia;
 - reduced the number of court procedures for most clients;
 - reduced time taken to settle disputes; and
 - increased client satisfaction.
- Useful to inform the development of a model of ongoing evaluation of court process and outcomes that could be applied to other jurisdictions (such as the Family Domestic Violence Court, or the Drug Court), and a number of alternative practices and initiatives being developed throughout regional WA;
- Useful in identifying the expectations and needs of the agencies that interact with FCWA (as providers of mediation, counselling, therapeutic, educational, child support, and legal services), and to enable them to develop their own programs and services in a way that is coordinated, supportive, and integrated with the court; and
- Useful to inform the further development of an integrated family law system that encourages non-litigious approaches to managing post-separation parenting disputes.

Recommendations

The following recommendations in respect of FCWA and the broader family law sector are presented for consideration. It is appreciated that many of the suggestions offered have already been incorporated in the Child-Related Proceedings model that was implemented in July 2006 or will be incorporated within the work of the Family Relationship Centres.

Recommendations for FCWA

Recommendation 1:

Consideration be given to FCWA continuing the policy of joint registrar and counsellor case management and, where possible, expanding it to include other processes such as the Orders Contravention List (OCL) and Summary Maintenance List (SML).

Recommendation 2:

Consideration be given to reviewing the FCWA data collection systems so that they capture the 'settlement' or 'resolution' rates rather than the 'finalisation' rates (noting that comparatively few matters are 'finalised' whereas most matters are 'resolved' such that litigation ceases). Similarly, it may be necessary to review terminology, so that matters that are settled are automatically removed from the Active Pending Cases List (rather than 'adjourned' and thus left without an obvious outcome).

Recommendation 3:

Consideration be given to reviewing the FCWA conference listings so that registrars are better able to manage the other conferences that are running concurrently with the CACs. This may have some resource implications in terms of conference rooms and availability of counselling staff.

Recommendation 4:

Consideration be given to FCWA providing some form of information sheet with the initial notification of the CAC appointment which outlines the CAC process and the expectations that clients will negotiate.

Recommendation 5:

Consideration be given to FCWA including some form of information sheet with the initial application that outlines the dynamics of the situation, parties involved, and possible outcomes. This would potentially allow the counsellor to develop an agenda for the CAC that could be available to all parties and so guide the conference.

Recommendation 6:

Consideration be given to revision of the FCWA 'Information Session' to include audiovisual representations of various court processes.

Recommendation 7:

Consideration be given to FCWA providing additional resources such as pamphlets and short videos or DVDs to be viewed when making an application to the Court. Such resources should also be available in community services, medical practices, ethnic community groups, and churches. Similar audio-visual material could be made available on various websites (such as the Family Court, and the Family Relationship Centres).

Recommendation 8:

Consideration be given to reviewing FCWA processes so that counsellors are able to have a close working relationship with the registrar, and to discuss possible case management options before the CAC.

Recommendation 9:

Consideration be given to FCWA declaring the proceedings of the CAC 'reportable', so that information gained by the counsellor could be discussed with the presiding magistrate. This would allow counsellors to individually manage a case from intake through to trial (if necessary), monitor referrals to external agencies and, where necessary, obtain the relevant feedback and report this to the judicial officer.

Recommendation 10:

Consideration be given to addressing the question of consistent practice within FCWA processes by providing more opportunities for internal training (including observation of colleagues' practice), so that the flexibility of various social science perspectives can be incorporated and accommodated within the legal framework.

Recommendation 11:

Consideration be given to FCWA reviewing the involvement of peripheral parties (such as new partners or grandparents) who have a vested interest in the outcome of proceedings, so that there is a formal protocol for involving 'significant others' in the court proceedings. Such a protocol should be well publicised among those agencies that support the Court and perhaps included in the information letter advising of the CAC appointment.

Recommendation 12:

Consideration be given to FCWA appointing at least two additional counsellors above the current FTE number to take into account the additional workloads inherent in CAC, and to reduce the potential for staff 'burn-out'.

Recommendation 13:

Consideration be given to FCWA including a review of the skill-sets and issues in the induction of new counselling staff into the Mediation and Counselling Service.

Recommendation 14:

Consideration be given to FCWA appointing a designated counsellor as community liaison or education officer to promote community awareness of the Court and its processes. This would help to address the misconceptions ('urban myths') concerning the age that a child may determine where they want to live, and the implications of the various court Orders.

Recommendation 15:

Consideration be given to FCWA inviting more service providers to give briefings to both counsellors and judicial officers at work practice meetings.

Recommendation 16:

Consideration be given to seconding FCWA counselling staff to the relevant government and non-government agencies and service providers in order to ensure accuracy of information that was being provided.

Recommendation 17:

Consideration be given to FCWA developing a training strategy that would provide agency staff with a detailed knowledge and understanding of the Family Court of Western Australia including:

- Court terminology, documentation, processes, and outcomes;
- the significance of Minutes of Consent;
- specific Family Court orders (such as Recovery or Discovery Orders);
- Orders from other jurisdictions (such as Restraining Orders);
- the implications of these various Orders for interactions between the parents, kinship networks, and with external agencies (such as schools or medical practitioners); and
- the interfaces between government departments and services (such as the Child Support Agency, Centrelink, Australian Taxation Office, Department for Community Development, and the police).

Recommendation 18:

Consideration be given for FCWA counsellors to visit services and agencies to observe services (such as the Child Support Agency, Legal Aid's ADR, Anglicare(WA)'s *Mums and Dads Forever*, and the mediation programs offered by Centrecare and Relationships Australia).

Recommendation 19:

Consideration be given to FCWA developing a capacity and the ability to coordinate both policy development and service integration within the family law sector.

Recommendation 20:

Consideration be given to FCWA in consultation with the Family Law Practitioners' Association to developing a training program for lawyers about their changing role in the Family Court and expectations of them in respect of their clients and the court processes.

Recommendations for the family law sector

Recommendation 21:

Consideration be given to the government and non-government agencies that support that family law sector requesting the federal government to review the competitive tendering policy (so that agencies are able to adopt a collaborative approach to developing an integrated family law sector in terms of knowledge sharing, program development, service delivery, staff training, research, and evaluation).

Recommendation 22:

Consideration be given to service providers developing a comprehensive guide to services that are available (including details of individual referral processes, costs, and estimated waiting times) and making these guides available to FCWA.

Recommendation 23:

Consideration be given to developing a specific Internet site where all agencies that provide services in the family law network could keep their information up to date.

Recommendation 24:

Consideration be given to developing an interactive referral system to pass clients between the various services and agencies within the family law system.

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We wish to thank those parents who provided feedback to the evaluators. We appreciate that, for many people, the interview may have raised some painful issues and we hope that by representing these in this report, the system may change so that it does indeed become a 'helping court'.

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**THE OPINIONS, FINDINGS, AND PROPOSALS CONTAINED IN THIS REPORT
REPRESENT THE VIEWS OF THE AUTHORS AND DO NOT NECESSARILY
REPRESENT THE ATTITUDES OR OPINIONS OF EITHER
THE FAMILY COURT OF WESTERN AUSTRALIA,
THE WESTERN AUSTRALIAN DEPARTMENT OF JUSTICE,
THE INDUSTRY COLLABORATIVE PARTNERS
OR EDITH COWAN UNIVERSITY.**

Main Report

Case Assessment Conferences in the Family Court of Western Australia: A Formative Evaluation

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1.1 Introduction

Case Assessment Conferences (CACs) were introduced in the Family Court of Australia in 2002. A different CAC model was developed and introduced as the first formal court event in the Family Court of Western Australia (FCWA) in July 2004. The FCWA model incorporated lessons learned from the Columbus Pilot conducted during 2001-2002 (Murphy & Pike, 2005) especially the value of collaborative inter-disciplinary case management, the need to become more client-focussed, and the need to include risk screening and assessment as a central element in the process.

Feedback from clients in the Columbus Pilot suggested that the combined expertise of the two disciplines (registrar [legal] and counsellor [social science]) had a significant influence on the conferencing process and the many positive outcomes that were obtained (Murphy & Pike, 2004). It was therefore determined that involving both the social scientists and the judicial officers would be a fundamental consideration in developing the CAC model in FCWA.

Another major outcome of the Columbus Pilot that informed the development of CAC was the need to identify and establish the various elements of abuse and the underlying unresolved issues that might preclude a stable long-term and, above all, safe solution to the application before the Court. It was decided that screening for risk of child abuse, family violence, substance abuse, neglect, and mental health issues would therefore be integral to the CAC process.

A joint working party of two registrars, two counsellor/mediators¹, and the Manager of the Mediation and Counselling Service was therefore formed under the joint leadership of the Acting Principal Registrar and the Director of Court Counselling to develop the various internal processes together with the necessary protocols, sector training, and briefings required to implement the CAC process.

¹ Although the nomenclature was changed as part of the CAC process, the term counsellor is used throughout this report as this is the term generally used (and understood) by both the sector and the clients.

Issues that were considered in this developmental process included:

- The importance of early intervention before parties became entrenched in their views or positions;
- The need for risk-screening component as a first and integral part of the process;
- The importance of parties to present their position and concerns in a safe and supported environment;
- The inter-disciplinary collaborative approach to case assessment;
- The ability to make Consent Orders without a further court attendance; and
- Input from a judicial officer as to the likely progress / outcome should the matter proceed further – the ‘reality check’.

1.2 The FCWA CAC Model

The following is a summary of the CAC model that was developed in FCWA.

The purposes of the Case Assessment Conference (CAC) were:

- (a) to enable the person conducting the conference to assess risk;
- (b) to enable the person conducting the conference to make recommendations about the appropriate future conduct of the case;
- (c) to enable the parties to attempt to resolve the case, or any part of the case, by agreement (Family Law Rule 12.03(2)); and
- (d) to conduct a procedural hearing as the end process to ensure due legal process of the matter.

The underlying aims of the CAC were to:

- screen for potential risks (child abuse, family violence, substance use, and/or mental health issues);
- identify the relevant issues and to concentrate on addressing them;
- assess the best way forward so that the parties are in the system for the shortest time possible; and
- provide the best opportunity for some form of resolution or agreement to be reached.

Although it is possible that couples might reach agreements, this was seen as a bonus rather than the primary purpose of CAC. The primary focus of the CAC was risk screening, assessment, and case management.

A total of two hours was allowed for each CAC. Conference proceedings were privileged (not admissible in other court proceedings), except for threats of harm or child abuse issues.

There were three phases in the CAC:

- The screening and assessment phase of the conference;
- The negotiation phase; and
- The procedural hearing.

The screening and assessment phase took about half an hour. The parties were interviewed individually by the counsellor to identify any risk issues and to establish the main issues that were in dispute.

If the parties were represented, their lawyers' role during this phase was to assist with clarification of residence, contact or other issues. The counsellor would also be identifying and assessing indicators of risk in areas such as: family violence, child abuse, substance abuse, medical or mental health concerns, and general parenting / neglect issues. This was the primary purpose of this first phase of the conference.

Where possible, the counsellor then convened the conference with all parties (and their lawyers) together in an endeavour to clarify obstacles to progress negotiation or resolution. Depending on circumstances, the conference might not jointly convene and the parties could be seen separately. If the parties could not be seen together, the counsellor reserved the right to refer to what was said in separate sessions during joint or 'shuttle' discussion if they decided that such information may help to focus the parents on determining safe and durable outcomes for children.

Subject to time constraints, there could be some negotiation of possible outcomes during this phase. At the end of this phase (about an hour) the registrar joined the conference to conduct the Procedural Hearing. The counsellor briefed the registrar on any risk concerns, the issues that had been identified or were in dispute, progress to date, and provided an assessment of the situation. This briefing was normally conducted in the presence of the parties and their lawyers. The counsellor then worked with the registrar during the Procedural Hearing.

In the Procedural Hearing phase (about 20 minutes), the registrar could make Consent Orders, ensure compliance with pre-action protocols, and make orders regarding costs notifications, filing of further documents, or the involvement of third parties. Orders could also be made concerning issues such as appointment of a child representative, obtaining a single (court) expert report or Family Report, further mediation or counselling, and referrals to external agencies for therapy, education, or treatments. In matters where abuse was identified, the registrar could refer the case for individualised case management and issue instructions regarding notifications of child abuse or risk.

In some circumstances, the parties might be rescheduled for a follow-up conference with the counsellor.

1.3 Evaluation Framework for CAC

The evaluation of CAC was incorporated in the project planning from the outset. The evaluation was funded by an Edith Cowan University Industry Collaborative Grant with FCWA, the Child Support Agency, Anglicare(WA), Relationships Australia, and Centrecare as project partners providing a combination of cash and 'in kind' support.

1.3.1 Aims

The aims of this evaluation project were to:

- evaluate the effectiveness of the CAC as an early intervention case assessment procedure that included a screening process of risk factors for all family members and focused on achieving best outcomes for children;
- evaluate the effectiveness of the CAC as a referral procedure that identified the practical and emotional obstructions to reaching agreement and recommended strategies to assist parties in finding resolutions to their disputes;

- evaluate the efficiency of the CAC as a case management system that reduced the number of cases that took a litigation pathway in the Family Court of Western Australia, reduced the number of court procedures, reduced time taken to settle disputes and increased client satisfaction;
- inform the development of a model of ongoing evaluation of court process and outcomes that could be applied to other jurisdictions such as the Family Domestic Violence Court, the Drug Court, and a number of alternative practices and initiatives being developed throughout regional WA;
- identify the expectations and needs of the agencies that interact with CAC procedures as providers of mediation, counselling, therapeutic, educational, child support, and legal services and to enable them to develop their own programs and services in a way that is coordinated, supportive, and integrated with the court; and
- further inform the development of an integrated family law system that encourages non litigation pathways in managing post-separation parenting disputes.

1.3.2 Methodology

The methodological approach examined the CAC procedure in terms of its context, inputs, processes, and outcomes as they affect the key stakeholders (family members, court personnel, government and non-government service providers, and legal practitioners (Cheetham, Fuller, McIvor & Petch, 1992; Patton, 1990; Thyer, 1991). Due to the flexible nature of the CAC procedure as the various registrar and counsellor teams (over 100 potential combinations) who developed different styles and approaches, the project was conducted as a “formative” evaluation in terms of efficacy, effectiveness, and efficiency (Hughes & Kirby, 2000). Efficacy studies seek to determine whether a strategy produces results. Effectiveness is measured by the degree to which the program produces positive outcomes for all the various parties involved. Efficiency is measured by the degree to which the program demonstrates the potential to reduce litigation (and therefore costs).

1.3.2.1 Design

Data collection involved a combination of quantitative and qualitative methods (Sells, Smith, & Sprenkle, 1995). Qualitative data included: survey questionnaires, in-depth interviews, focus groups, appraisal of documents, and observations of CACs. Analysis of interview data was guided by the principles of thematic content analysis and grounded theory (Denzin & Lincoln, 2003). Quantitative data included analysis of statistical records, as well as comparative cost/outcome analysis (Murphy & Pike, 2004).

1.3.2.2 Study Populations

There were five populations in this evaluation:

- a sample of parents (21: 10 mothers and 11 fathers) who participated in CAC,
- FCWA personnel: registrars (5), counselors (11),
- legal practitioners (12) whose clients have participated in a CAC,
- key personnel (13) from the various agencies that support the court.

In addition, a sample of 52 ‘first hearing’ matters from the FCWA’s General List before the introduction of CAC provide comparative ‘baseline’ data and effectively became a ‘Control Group’ for the evaluation. This baseline data was compared with those obtained for the Columbus Control Group (Murphy & Pike, 2005) as the parents in the Columbus Control Group experienced similar court processes as those in the CAC Control Group.

The use of two data sets (CAC Control Group (n=52) and the Columbus Control Group (n=62)) as baseline data enhanced triangulation of the CAC evaluation data.

1.3.3 Ethical Considerations

The evaluation was approved by the FCWA Research Reference Group, the Department of Justice Research Application and Review Committee, and the Human Research Ethics Committee of Edith Cowan University.

1.3.4 Sampling the CAC Population

In order to provide a more robust assessment of CAC, it was decided to allow the first six months after implementation for the registrar and counsellor teams to develop their individual approaches, and for members of the legal profession to establish their working relationships with the counsellors. The sample population for the evaluation therefore consisted of parents whose cases were assigned to a CAC in the first five months of 2005. This also enabled the CAC Control Group cases to be taken from the Court Lists during the same time the previous year thereby providing for some homogeneity between the two samples. A total of 52 cases were identified as the CAC Control Group.

In order to obtain the maximum diversity of registrar and counsellor combinations and to accommodate part-time employment patterns of some of the registrars and counsellors, the CAC samples were:

- February 2005 – Mondays
- March 2005 – Tuesdays
- April 2005 – Wednesdays
- May 2005 – Thursdays
- June 2005 – Fridays

This resulted in a total potential sample of 78 CAC cases. However in 40 of these, the conference did not convene due either to settlement before the scheduled date or one of the parties failed to attend the conference. Additional files were therefore identified for different dates in each month so that a total of 54 CAC files (potentially 108 parents) were included in the evaluation. Two extreme cases (outliers) were excluded from the data analysis as the time taken from filing the first application to attending the CAC took an abnormally long time (111 and 376 working days respectively) due in one case to the need to establish the whereabouts of one party (executing a Discovery Order) and in the other due to serious long-term illness.

Only 21 of the 104 potential parent participants in the final CAC sample of 52 cases volunteered to be interviewed. The inability to either trace litigants and/or secure their agreement to provide feedback to the court in a formal interview is consistent with the experience reported in the Columbus Pilot evaluation (Murphy & Pike, 2005). However, the parents who did provide feedback represented almost 20% of the potential population.

1.3.5 Evaluation Tools

There are three elements to this aspect of the evaluation methodology: observation of the CAC process, semi-structured interviews with parents and stakeholders as noted earlier, and comparative cost/outcome analysis.

1.3.5.1 Observations

The evaluators observed a range of CAC cases. This involved monitoring the entire process including:

- preparation by the court counsellor;
- introductions to the parents (and their lawyers, if present);
- observing the CAC process; and
- debriefing and reviewing with the counsellor (and, where possible, with the registrar).

1.3.5.2 Semi-structured Interviews

A semi-structured interview guide was developed for the different types of interviews. The interviews were designed to probe aspects of understanding and knowledge of the CAC process, attitudes to and reflections on this type of approach, satisfaction with the process and the outcomes, and suggestions for ways to improve the process.

Where possible, interviews were taped and then transcribed. Alternatively, the researcher made extensive notes during the interview. Thematic analysis was conducted by each researcher independently, and then the full research team (the two Chief Investigators, the Principal Investigator, and four Research Assistants) developed a question-ordered matrix to compare and synthesise the findings. In some case, quotes from the interviews have been edited to improve readability.

1.3.5.4 Comparative Cost/Outcomes Analysis

Details of the mechanics of this methodology are described in detail in the *First Interim Report* of the Columbus pilot evaluation (Murphy & Pike, 2002) and published in the *Family Court Review* (Pike & Murphy, 2006).

This mechanism established that the relative ‘cost’ of judges, registrars, and counsellors was \$400, \$275, and \$100 per hour respectively in 2002 dollar terms. This value is held constant in order to allow comparison over time with various court processes. Court events are ‘costed’ to the nearest six minutes based on Reports of Proceedings or Conference Minutes on the case file. Thus 30 minutes before a judge equates to \$200, 15 minutes before a registrar/magistrate equates to \$69, while an hour with a counsellor equates to \$100. These comparative costs are calculated in six month blocks based on the date of filing the first application to the court.

Electronic records and file notes such as *Casetrack* were not included as they have evolved constantly during the time of the evaluation and there is considerable variation in the individual accuracy of inputs. The methodology is consistent between the CAC and Columbus evaluations thereby allowing for direct comparison between the two processes.

Outcomes of various court processes are less precise. In some cases, the file notes indicated that full agreement was reached on all issues and the matter was removed from the Active Pending Cases List. In other cases, some form of interim agreement was noted and the matter was adjourned (and may remain so for many years). In a significant number of cases, there was no real outcome as one or other of the parties merely failed (or ceased) to attend a scheduled hearing and the matter was adjourned. These outcomes may occur at differing stages such as the CAC, the General List, a Conciliation Conference, a Pre-Trial Conference, or at Trial.

A number of cases will also re-open over time but assessing outcomes over time requires longitudinal data that is beyond the scope of this report.

In order to provide some comparison in terms of demographic profiles, litigation experiences, and outcomes, the researchers also drew on the data from the Control Group in the Columbus Pilot evaluation project (Murphy & Pike, 2005). In that study, although this group of 62 cases was identified as having high levels of conflict or abuse, their cases continued within the 'normal' Family Court system (rather than the intensive individualised case management of the Columbus Pilot cases) so their court experiences, at least in the initial stages, should be similar to those in the CAC Control Group.

1.4 Structure of Report

The following Chapter provides both demographic and litigation profiles of the CAC population and the CAC Control Group. This chapter also presents the comparative cost/outcome analysis between the CAC population and the CAC Control Group. Where relevant, these findings are compared with the Columbus Control Group data.

Chapters Three, Four, Five, and Six present the feedback from the professional stakeholders – the registrars, counsellors, lawyers, and the views of personnel from various government and non-government agencies that support the family law sector. Chapters Seven and Eight present the feedback from the Mothers and Fathers respectively.

In Chapter Nine we present our assessment of the efficacy of the CAC process and conclude our report with a number of recommendations that the Court may wish to consider as it endeavours to implement new initiatives that seek better outcomes for separating parents and their children.

Chapter 2

Demographic and Litigation Profiles

This chapter presents the demographic and litigation profiles of 52 cases that had a Case Assessment Conference as their first court event during the period February to June 2005 and compares these profiles with similar data for the 52 cases in the CAC Control Group who filed a first 'child-related' application to the Court during February to June 2004. In addition to the demographic data concerning these families, some indications of the underlying issues are also presented. As noted earlier, these data are based on the content of court files only and do not include details of counsellors' case management notes (either hard copy personal notes or within the *Casetrack* system).

In order to provide some comparative data, the corresponding data for the 62 families in Control Group in the Columbus Pilot evaluation project is included as these were cases that presented in very similar circumstances, and followed similar litigation pathways, to those in the CAC Control Group. Where appropriate, comparison is also made with data available from the Australian Bureau of Statistics (ABS) in order to assess whether this client profile is consistent with the general Australian population, or whether they might potentially be a distinct sub-population.

In the guidelines to statistical requirements for reporting Key Performance Indicators (KPI), the Auditor General of Western Australia (AGWA) has established the optimum sample sizes and the error rates that should be applied when extending data to a wider population (AGWA, 1998). For instance, a sample of 52 can be applied to a population of 100 with an error rate of plus or minus 10 percent. In this report, the total population of CAC, CAC Control Group, and Columbus Control Group (n=166) can be used to give an estimation of the profile of 1000 with an error rate of plus or minus 5%, or to a population of 3,500 (approximately the same number of child-related applications lodged in FCWA annually) with an error rate of plus or minus 10% percent.

2.1 Demographic Profiles

This section provides details of the types and length of relationship of the parents as well as the number and ages of children involved. The data also highlights the number of 'hidden parties' (former partners or new partners) and 'hidden children' who are not mentioned in the court application but who are invariably affected by, and can have a considerable impact on, the outcome of the proceedings.

2.1.1 Types of Relationships

Australian census data on types of relationship requires considerable interpolation as it relates to couples who are married (de jure) or divorced – both formal life events that are enumerated within the concept of 'Vital Statistics'.

There is minimal ability to identify or count couples living in de facto relationships as there is no formal way of identifying such couples either as they form their relationship or if and when, they separate. There is also a small proportion of parents who never actually live together – these are described by Glezer (1997) as Living Together Apart (LAT) families.

The relationship data for the CAC Sample (n=52), CAC Control Group (n=52), and Columbus Control Group (N=62) are presented in Table 1.

Table 1

Types of Relationship

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>	<i>Columbus Control Group (n= 62)</i>
Married	25 [48%]	27 [52%]	27 [44%]
De-facto	23 [44%]	22 [42%]	33 [53%]
LAT	4 [8%]	3 [6%]	2 [3%]

The consistency between the three samples in Table 1 is noticeable. Current ABS data suggests that only about 9% of couples with children live in de facto relationships (ABS, 2003). However, over 40% of the couples in all three samples in Table 1 identified themselves as living in a de facto relationship. This is significantly more than the statistical error rate of plus or minus 10% and suggests that the population accessing FCWA is atypical of the general Australian population of couples with children.

2.1.2 Age of Parents

ABS data suggests that the age at which couples divorce (the official end of a de jure marriage) continues to rise. In 2003, the median age for divorcing males in Australia was 43 years and the median age for divorcing females was 40.3 years. Note that these figures relate only to divorces, which often does not happen until much longer after a couple has separated. There is no equivalent data available for ages of married parents at separation or for de facto couples.

The ages of the parents under consideration in this report are presented in Table 2.

Table 2

Ages of the Parents at Lodging Application

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>	<i>Columbus Control Group (n= 62)</i>
Average age of Mothers	31.2	33.2	31.8
Average age of Fathers	34.1	36.0	36.0

Observing that these couples take at least 20 months on average before lodging an application with the Court, then it is evident that they are significantly (almost 10 years) younger than the overall divorcing population. Indeed, the ages of this population are not very different to the ages at first marriage for the bulk of the Australian population (31.8 for men and 29.2 for women). This also suggests that the people accessing FCWA are atypical of the divorcing population.

2.1.3 Length of Relationships

In Australia, the average length of relationship from marriage to separation is 8.7 years (ABS, 2004). There is no equivalent data for de facto relationships. The lengths of relationships of the parents in this evaluation are presented in Table 3.

Table 3

Lengths of Relationships

	<i>CAC Sample</i> (n=52)	<i>CAC Control Group</i> (n= 52)	<i>Columbus Control Group</i> (n= 62)
Average length of relationship	7.0	7.7	6.4

Again, these data are consistently (and quite significantly) different from the overall data in that these relationships are, on average, much shorter than the ABS (2003) data suggests.

2.1.4 Number and Ages of the Children

The 52 CAC families had an overall total of 92 children involved in their applications before the Court. The 52 CAC Control Group families had a total of 87 children while the 62 families in the Columbus Control Group had a total of 93 children. Table 4 presents the data regarding the number and ages of children in the three samples.

Table 4

Number and Ages of Children in Families

	<i>CAC Sample</i> (n=52)	<i>CAC Control Group</i> (n= 52)	<i>Columbus Control Group</i> (n= 62)
Total Number of Children	92	87	93
Average Number of Children	1.8	1.7	1.5
Average age of Eldest Child	8.1	7.2	5.8
Average age of Youngest Child	5.9	5.5	4.2

Although the families in the Columbus Control Group had on average a similar number of children, those children were younger than those in the CAC evaluation.

2.1.5 ‘Hidden’ Parties: Stepparents

Previous relationships can generally only be identified in Court files by the acknowledgement of children from such a relationship. As noted in the Columbus Pilot report (Murphy & Pike, 2005), there is a distinct difference in the mothers’ and fathers’ reporting of children from previous relationships, with mothers consistently acknowledging such children in affidavits whereas fathers do not. This results in the likelihood that the figure for both the fathers’ previous relationships and any children to be a significant under-enumeration.

As shown in Table 5², 14 of the CAC Sample and 12 of the CAC Control Group had a child from a previous relationship which had created a stepfamily in their current relationship. Also, 24 of the CAC Sample and 20 of the CAC Control Group parents had repartnered at the time of the application before the Court. Thus in these 104 cases, there were at least 70 other partners (both previous and current) who had an interest in the outcome of the proceedings.

Table 5

**Hidden Parties:
Indications of Multiple Family Formations (Stepfamilies)**

	<i>CAC Sample</i> (n=52)	<i>CAC</i> <i>Control Group</i> (n= 52)
Mothers previously partnered	10	7
Fathers previously partnered	4	5
Total previously partnered	14	12
Mothers Repartnered	10	11
Fathers Repartnered	14	9
Total Parents repartnered	24	20
Total Hidden Parties	38	32
Combined Total (previous and current)	70	

The issue of repartnering in these cases becomes even more significant when compared with ABS data on family reformation.

ABS (2003) data suggests that about 10% of couples have children from other relationships and so could be classified as stepfamilies. However, as shown in Table 9 (2.1.8), ‘stepfamily issues’ were identified in almost half (46% and 48% respectively) of both the CAC Sample and the CAC Control Group – a very significant (450%) over-representation of stepfamilies in the court population.

² Columbus Control Group data are not included in the following sections as that data now covers a four-year period rather than the twelve months of this evaluation.

However, ABS then distinguishes between:

stepfamilies: where one or other of the couple has children from a previous relationship – a ‘his’ and/or ‘hers’ family – about 6% of couples with resident children, and

blended families: where the couple has a common child and other children from former (or subsequent) relationships – a ‘his’ and/or ‘hers’ and ‘ours’ family, – about 4% of couples with resident children.

[**Note** that blended families are also a subset of stepfamilies thus about 10% of Australian families are actually stepfamilies within the ABS definitions (ABS, 2003.)

In the FCWA context, blended families can be identified as those who acknowledged a child from a previous relationship in their court documentation but were litigating over a common child (an ‘our’ family). As shown in Table 5, there were 14 (27%) of this family type the CAC sample and 12 (23%) of the CAC Control Group – a very considerable (600%) over-representation of blended families considering that they are from a very small minority (4%) of couples with children (ABS, 2003).

2.1.7 ‘Hidden’ Parties: Children

The children from both previous and new relationships are also affected by the proceedings as residency and contact arrangements for either half-siblings or step-siblings are being considered. As shown in Table 6, there were a total of 58 such children who were ‘hidden’ in the court processes in the 104 CAC and CAC Control Group cases.

Table 6

Children from other Relationships

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>
Previous child: of mothers	18	11
Previous child: of fathers	6	6
Total Previous Children	24	17
Subsequent child: of mothers	8	4
Subsequent child: of fathers	1	4
Total Subsequent Children	9	8
Total Hidden Children	33	25
Combined Total (previous and current)		58

As noted in earlier reports (Murphy & Pike, 2005; Pike & Murphy, 2006), these children are seldom acknowledged in Family Court proceedings. However, the outcomes of those proceedings may have very profound impacts on their lives and relationships with their half-siblings or step-siblings.

2.1.7 Allegations against Parents

Almost all families within the Court process have multiple allegations and issues that impact upon their post-separation parenting relationships, and especially the management of contact and residency of their children. Tables 7 and 8 provide a summary of the concerns that were raised in the various court documentation used to map the case files. In both the samples (CAC and Control Group), most of these allegations were raised in affidavits and had little supporting evidence on the files. However, these data provide an insight into the complex and multiple issues underlying cases before the Court.

The results of the CAC screening, which may have identified other issues, are not available on Court files.

Table 7

Allegations against Mothers

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>
Allegations against Mothers		
Drug Abuse	8 [15%]	10 [19%]
Alcohol Abuse	2	1
Violence against Father	3 [6%]	10 [19%]
Violence toward Child	1	4
Neglect of Child	3	2
Mental Illness	6 [11%]	11 [21%]
Sexual Abuse Mother v Child	0	0

Table 8

Allegations against Fathers

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>
Allegations against Fathers		
Drug Abuse	16 [31%]	10 [19%]
Alcohol Abuse	9 [17%]	3
Violence against Mother	15 [29%]	18 [35%]
Violence toward Child	4	2
Neglect of Child	2	1
Mental Illness	6 [11%]	8 [15%]
Sexual Abuse Father v Child	2	0

Notwithstanding the differences in both total numbers and percentages of the two populations, it is evident that issues of violence and abuse between partners and against children together with drug use, alcohol abuse, and mental illness were significant factors in both populations.

2.1.8 Other Issues

There were a number of other issues noted in the case files that added further complexities among the families after separation. These issues (presented in Table 9) included managing the myriad of relationships associated with the stepfamilies that resulted from parental repartnering, questionable or denied paternity, grandparent and extended family involvement (either in supervising contact or caring for grandchildren), and relocation of families outside of the metropolitan area, state or, occasionally, Australia.

Table 9

Other Issues within Families

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>
Stepfamily Issues	24 [46%]	25 [48%]
Paternity	2	1
Grandparent/kin involvement	8 [15%]	6 [11%]
Relocation	11 [21%]	10 [19%]

There is remarkable consistency between these two samples in terms of these issues. As noted in 2.1.5 above, the incidence of stepfamilies is significantly higher than the 10% of families identified in official data as ‘stepfamilies’ or ‘blended families’ (ABS, 2003).

Relocation (either intrastate, interstate, or internationally) is a major factor in these highly mobile families where up to 60% of the population move at least once within the first year following separation.

These data are also consistent with the Columbus Pilot samples, in that grandparents were often involved as carers (for their grandchildren) where one or both of the parents was involved with substance abuse (Murphy & Pike, 2005).

2.1.9 Official Notifications as Indication of Conflict

There were three types of official applications or notifications that provide an additional indication of the levels of conflict in these families. These formal notifications (Table 10) are:

- Applications to FCWA for recovery of children – Recovery Orders;
- Applications to Magistrates court for various Restraining Orders (RO or VRO) to limit or control contact by alleged violent of abuse partners; and
- Notification to the Department for Community Development of possible risk to the children – Form 66.

Table 10

Official Notifications within the Families

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>
Recovery Orders	5 [10%]	12 [23%]
VRO/RO	15 [28%]	18 [35%]
Notification of risk of abuse	1	3

The high levels of VRO/ROs are consistent with the high levels of allegations regarding inter-parental violence in Tables 7 and 8 above.

2.1.10 Demographic Profile: Summary

When compared with ABS data, the summary of the demographic profiles outlined above suggests that the CAC sample and the CAC Control Group are not typical of the general Australian population of couples with children:

- More than 40% of both samples live in de facto relationships as opposed to 9% of the general population – more than a 400% difference;
- The parents in the two samples are almost 10 years younger than the general divorcing population (it is acknowledged that there is no such data for de facto couples);
- The relationships of the two samples are shorter than the national average for divorcing couples – about 7 years as opposed to 8.7 in the national data;
- There are significantly more re-partnered families in the two samples than ABS enumerates in the general population such that ‘stepfamily issues’ were identified in almost half of the cases in both samples whereas ABS suggests that only about 10% of couples with children in the general population could be classified as stepfamilies; and
- In the FCWA context, parties are litigating over a ‘common’ child and with another child acknowledged in their documentation are actually the blended families defined by ABS. Such families are identified as only 4% of Australian couples with children yet this type of family represent almost half of the clients in both the CAC sample and CAC Control Group.

Closer examination of this client group reveals:

- high levels of poverty (access to Healthcare Cards and thus exempt court fees),
- early exit from school, literacy and comprehension difficulties (inability to understand the legal system or the documentation),
- transient employment patterns,
- inability to access legal assistance other than legal aid (hence the high number of self-represented litigants [SRL]),
- limited ability to negotiate conflict (hence the high level of violence in these cases),
- externalisation of conflict (hence the need to access the court system),
- high levels of substance use and abuse,
- rigid partnership and parental/gender role definition, and
- attachment issues (especially the myth that having a child together will cement a relationship).

All of these factors are identified within Australian research as being consistent with lower socio-economic status, poverty, social disadvantage, and social exclusion (Butterworth, 2003; Millward, 2002; Murphy, 1998; Travers & Richardson, 1993; Weston & Smyth, 2000).

It is therefore concluded that the similarities between the demographic profiles of these two samples (CAC and the CAC Control Group) are such that it is valid to make comparisons concerning the litigation profiles and outcomes of these two populations.

2.2 Litigation Profile

There are four elements of the litigation profile:

- The time-frames from filing an application until various court events occur;
- The outcomes of these events in terms of managing, and potentially settling, the matter;
- The comparative imputed 'costs'³ of the process; and
- The comparative time that judicial officers and counsellors are involved with cases over a given period – in this evaluation, 12 months.

Some data from the Columbus Pilot Control Group (Murphy & Pike, 2005) is included in this section to provide an additional point of comparison.

2.2.1 Litigation Time-Frames

As shown in Table 11, the mean time from separation to the first court event in the CAC sample was 20 months compared with the CAC Control Group of almost 31 months. The mean time between separation and the first application to the Court in the 62 Columbus Control Group cases was 25 months. Notwithstanding the disparity between the three samples, it is clear that the concept of the Court having a capacity for early intervention to reduce conflict before it becomes entrenched may require reconsideration.

Although some matters commenced within days of the separation (especially where there were recovery or, in some cases, relocation concerns), most matters took almost two years before an application was filed in the Court. Explanations for the seemingly excessive time delay include alienation of children from the contact parent, threats of withdrawal of contact or relocation of the contact parent, parental reconciliations and subsequent separations, the influence of a new partner (often accompanied by a new child or a more suitable housing arrangement), changing attitudes of children who sought to either cease or re-establish contact, and people attempting to manage the complexities of the litigation process as a self-represented litigant.

These data are presented in Table 11.

³ As noted in Pike and Murphy (2006) this method of comparison is based on the time that court staff spend with the person /couple in a formal capacity. It does not represent that true 'costs' but rather provides a mechanism for comparison within and between different processes.

Table 11
Litigation Time-Frames

	<i>CAC Sample</i> (n=52)	<i>CAC Control Group</i> (n= 52)
Separation to filing Form 1 (mths)	20.3	30.7
Filing to 1 st Court Event (days)	29.6	20
Filing to CAC (days)	30.2	-
Filing to 1 st CC(CWI) ⁴ (days)	96 (n=13)	116 (n=23)
Length of time in System (wks)	23	28
Number of Court Events (av)	2.9	4.2

The data in Table 11 suggest some extremely encouraging outcomes in terms of more timely resolution of matters in the CAC process. Specific indicators are:

- shorter times in the system (23 weeks from filing the first child-related application as opposed to 28 weeks for the CAC Control Group) – **a 20% reduction**;
- fewer court events (2.9 as opposed to 4.2 for the CAC Control Group) – **a 30% reduction**;
- shorter time to a Conciliation Conference (CC(CWI)) (96 days as opposed to 116) – **a 17% reduction**); and
- fewer matters requiring such a Conciliation Conference (25% as opposed to 44%) – **a 19% reduction** in this type of court event).

The increased time from filing to the first court event (20 to 30 days) in the CAC sample is a reflection of the limited number of CAC appointments (5) available each day. This is a resource issue in terms of CAC conference rooms, counsellors, and registrars.

In terms of overall efficiency, these data suggest that CAC is achieving the aim of keeping people in the system for the shortest time possible and achieving an acceptable outcome.

2.2.2 Outcomes

As noted in the Final Report of the Columbus Pilot (Murphy & Pike, 2005) the concept of ‘settlement’ in these cases may be misleading as the complexities, underlying issues, and parental mistrust are such that, even in the most favourable of circumstances, a stable longterm outcome is highly unlikely for many of these parents. Officially the Court resolves matters with either ‘Interim’ Orders or ‘Final’ Orders, whereas most of the litigants just want some form of formal framework to manage their relationships. It is unclear in many of the files that were examined in this evaluation whether the orders were either ‘interim’ or ‘final’. Similarly, the practice of ‘adjourning’ a matter does not indicate whether anything was resolved but rather that it is still not at the stage of being granted a ‘finalised’ status.

⁴ Conciliation Conference (Child Welfare Issues): Only 13 of the 52 (25%) CAC sample had such a conference whereas 23 (44%) of the CAC Control Group had such a conference before a registrar.

Table 12**Outcomes: First 12 months**

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>
Settled at CAC	13	-
Settled in Counselling Conf.	5	-
Settled in General List	6	17
Settled at CC(CWI)	13	13
Settled at LAWA ADR Conference	-	-
Settled at Pre-Trial Conference	-	2
Settled at Trial	-	1
Adjourned	4	6
No result (party withdrew)	3	11
Continuing	8	2
Re-Opened	3	2
Settled at CC(CWI)	2	-
No result (party withdrew)	1	-
Continuing	-	2

Notwithstanding the difficulty of classifying outcomes, the data in Table 12 suggest that 24 (over 45%) of the 52 CAC cases settled at a relatively early stage (before a Conciliation Conference – within 19 weeks after first filing) as opposed to 17 (about 30%) of the CAC Control Group cases that settled before a Conciliation Conference (23 weeks after filing). This represents a 50% increase in ‘early’ settlements.

A further 13 (25%) of the CAC cases settled at the first Conciliation Conference – thus a total of almost 70% of CAC matters resolved within an average of 23 weeks. In contrast, only 30% of the CAC Control Group matters had settled within this timeframe.

Although a further 25% of the CAC Control Group matters did settle by the time of their first Conciliation Conference, this took considerably longer to achieve (28 weeks) and still represents only 55% of this group.

A very significant number (21%) of Control Group matters had no real outcome as one or both of the parties merely failed to attend a scheduled court event. However, only 6% of the CAC sample fell into this category. This apparent ability to engage both parties is seen as a significant outcome in its own right and is probably reflected in the higher settlement rates of the CAC process.

These data indicate that, in addition to being efficient, the CAC process is both efficacious and effective.

2.2.3 Comparative Court Costs

Another method of assessing the efficacy of a process is by its ‘cost’ compared with other processes designed to achieve a similar outcome. By holding the relative costs constant, it is possible to compare different processes over time. In this report, the relative costs of judges, magistrates, and counsellors are held constant in 2002 dollar terms (for a detailed discussion of this form of process analysis refer to our article in *Family Court Review* – Pike & Murphy, 2006).

The relative costs in Tables 13 and 14 are based on the imputed cost of a judge being 400 units (including all relevant on-costs), a magistrate 275 units, and a counsellor 100 units. There is a slight distortion in the magistrate costings in the CAC sample as a registrar (rather than a magistrate) was appointed in 2005 to undertake some of the conferencing work. A registrar only ‘costs’ 125 units but this could not be incorporated within the methodology as it currently stands.

Table 13

Comparative Court Costs: First 6 Months

	<i>CAC Sample</i> (n=52)	<i>CAC Control Group</i> (n= 52)	<i>Columbus Control Group</i> (n= 62)
Judge	-	340 (n=1)	40 (n=2)
Magistrate	317	201	497
Counsellor	212	65	222*
Total ‘costs’	528	266	719

Note: *This includes an allowance of 50 counsellor units for the assessment against the Columbus Pilot inclusion criteria and a further element of 50 counsellor units for the administration involved in submitting notices of abuse.

Thus, at the end of the first six months, the CAC matters have an imputed ‘cost’ almost 100% more in terms of court time than the CAC Control Group. However, within this timeframe, almost 70% of these matters have been settled as opposed to only 30% of the CAC Control Group. This is reflected in almost twice as many of the CAC Control Group still being unresolved between 6 and 12 months after the initial application (Table 14).

Table 14

Comparative Court Costs: First 12 Months

	<i>CAC Sample</i> (n=52)	<i>CAC Control Group</i> (n= 52)	<i>Columbus Control Group</i> (n= 62)
Cases Continuing 6-12 mths	9 [17%]	16 [31%]	39 [75%]
Magistrate	857	491	846
Counsellor	303	109	245
Total ‘costs’ to 12 mths	1160	600	1091

These data suggest that, in terms of overall demand on court resources, there is minimal difference over a twelve month period despite the apparently lower ‘costs’ of the CAC Control Group because the CAC is achieving a more expeditious resolution rate for significantly more matters. The nine CAC matters that remained unresolved after 12 months were all extremely complex and thus the imputed costs are very similar to the Columbus Control Group matters.

2.2.4 Comparative Court Time

The data in Tables 13 and 14 can also be presented in terms of the average time that the court personnel (essentially magistrates and counsellors) are involved with each matter. These data are presented in Tables 15 and 16.

Table 15

Comparative Total Court Time (Hours): First 6 Months

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>	<i>Columbus Control Group (n= 62)</i>
Judge	-	0.8 (n=1)	0.2 (n=2)
Magistrate	1.1	0.7	1.8
Counsellor	2.1	0.6	2.2*

Note: *This includes an allowance of half an hour (0.5) of counsellor time for the assessment against the Columbus Pilot inclusion criteria and a further similar allowance for the administration involved in submitting notices of abuse.

Table 15 shows that during the first 6 months, on average, the magistrate involvement with a matter increased from 0.7 hours in the CAC Control Group to about 1.1 hours in the CAC sample. During the same period, the counsellor’s involvement went from 0.6 to 2.1 hours respectively – a very significant increase. As shown in Table 16, this difference in staff input is even more marked by the end of the first 12 months.

Table 16

Comparative Total Court Time (Hours): First 12 Months

	<i>CAC Sample (n=52)</i>	<i>CAC Control Group (n= 52)</i>	<i>Columbus Control Group (n= 62)</i>
Judge	-	1.5 (n=1)	3.5 (n=3)
Magistrate	3.1	1.8	3.1
Counsellor	3.0	1.1	2.4
Cases Continuing 6-12 mths	9 [17%]	16 [31%]	39 [75%]

The CAC Control Group profile represents the traditional basis of resource allocation within FCWA. The 60% increase in magistrate time and almost 200% increase in counsellor time with each case over a twelve month period indicates the potential for excess workloads (and staff fatigue). In the case of judicial officers, this has been addressed in part by the appointment of one magistrate and also a registrar (whose primary responsibility is conducting conferences) during the period under review. However, no such additional appointments have been made for the counselling staff.

The data in this section support the qualitative observations in later sections about:

- higher early resolution rates in the CAC process;
- shorter periods in the system;
- the value of the counsellor’s role in the process to not only screen for various issues but also to identify issues in dispute, to attempt to mediate these, and to brief the conference registrar on progress;
- the potential for counsellor ‘burn out’ due to increased work loads; and
- the advantages of collaborative approaches to addressing issues within FCWA.

2.2.5 Impact on other counselling work

There are two important additional areas of work performed by counselling staff within FCWA namely, to prepare Family Reports and to manage clients who are subject to a Supervision Order.

2.2.5.3 Family Reports

Family Reports are usually required when older children (usually aged 10 and over) are involved and the Court considers it necessary to ascertain the child’s views of the proposals being put before the Court. Between 15 and 20 hours is allocated for the preparation of such reports, depending on the number of people to be interviewed.

As shown in Table 17, the number of Family Reports ordered to be undertaken declined markedly (from 326 in 2001/02 to 230 in 2002/03) as the case management regimes of the Columbus Pilot became more effective. The number of such reports ordered has since stabilised at about 220 per year.

Table 17

Family Reports Ordered : 2000 to 2006

Year	Number
1999/2000	306
2000/2001	331
2001/2002	326*
2002/2003	230
2003/2004	207
2004/2005	187**
2005/2006	232 (est)

Notes: * Columbus Pilot commenced July 2001

** Case Assessment Conferences commenced July 2004

About 95% of the Family Reports that are ordered are actually completed annually and consume a significant amount of staff effort. In some cases, the matter is resolved before the report is actually completed.

2.2.5.4 *Supervision Orders*

Supervision Orders are made where the litigation profile of these parents demonstrates their inability to cooperate and therefore the counselling staff are required to assist the parents in managing their post-separation parenting regime. These clients can be extremely demanding and manipulative and consume disproportionate resources.

As shown in Table 18, there has been a significant decline in the numbers of Supervision clients over the past five years with two major declines coinciding with the introduction of the Columbus Pilot in July 2001 and the CAC in July 2004. From the introduction of Columbus until the year ending June 2003, the number of supervision clients declined from 89 to 64 – a reduction of almost 30%. This number continued to decline due to the intensive case management of the Columbus conferencing process taking over the supervisory function so that by 2004/05, there were only 23 supervision clients.

However, this decline in counsellor involvement with supervision was offset by the increased involvement with the Columbus cases (on average 11.5 hours in the first 12 months with each of the 95 cases) so that overall there was no reduction in counsellor workload.

Table 18

Supervision Clients: 2000 to 2006

Year	Number
1999/2000	183
2000/2001	111
2001/2002	89*
2002/2003	64
2003/2004	53
2004/2005	23**
2005/2006	22 (<i>est</i>)

Notes: * Columbus Pilot commenced July 2001
 ** Case Assessment Conferences commenced July 2004

These data tend to confirm the observation above concerning counsellor fatigue or ‘burn-out’, as one form of supervision has been replaced by another in the form of intensive case management within the Columbus individualised case management program.

2.2.6 *Litigation Profile: Summary*

The data in this section suggest some extremely encouraging outcomes of the CAC process including:

- A 20% reduction in the time that a matter is in the system,
- A 30% reduction in court events,
- A 50% increase in settlement at an early stage (before a Conciliation Conference),
- A 17% reduction in the time taken before a matter has a Conciliation Conference,
- A 19% reduction in the number of matters requiring such a Conciliation Conference.

When considered against the demographic profile of the clients outlined in the first part of this chapter it is considered that these evidence-based outcomes alone indicate that having the CAC as the first formal court event is a very effective and cost-efficient case management approach.

The next chapters in this report present the views of the various stakeholders in the CAC process namely the registrars, counsellors, legal practitioners, clients, and agency personnel.

Chapter 3

Professional Stakeholder Feedback: Registrars

This chapter reports the feedback from the stakeholders in the various professions in the CAC process – registrars, counsellors, legal practitioners as well as personnel from some government and non-government agencies. The data were obtained through a combination of semi-structured interviews, focus groups, and informal discussion (a major advantage of having a researcher located within the court itself). In all, five of the eight registrars, ten of the eleven counsellors, twelve legal practitioners (with a collective total of over 200 years' experience), thirteen people from various government and non-government agencies in the family law sector, and twenty-one parents (ten mothers and eleven fathers) provided detailed feedback on their experiences and impressions of the CAC process.

The overall assessment of these 61 people is that CAC is proving very beneficial to many parents who seem to appreciate the opportunity to have someone in authority listen to their side of the story. Informal assessment by the 'professional' stakeholders was that the CAC process is contributing to a higher settlement rate, if not at the CAC itself, then certainly at the first Conciliation Conference. Issues such as allocation of court resources, scheduling, time factors, consistency of practice, and integration of external services were significant factors for these professionals.

3.1 The CAC concept

Five of the eight registrars participated in formal semi-structured interviews while another two provided informal reflections on the CAC process. All of the registrars provided informal feedback during the project as different issues and circumstances were raised and addressed within a particular conference.

The registrars were generally supportive of the CAC concept describing it as being less stressful and less confrontational for the clients, and more 'user friendly' than the formal litigation process. They saw it as a useful additional tool for case management and for early intervention before couples become 'polarised' and establish entrenched views. The registrars observed that the CAC process focused the parents on their children's issues and wellbeing rather than the adult conflict. They also commented on the impact that the introduction of CACs had on reducing the number of matters that they were hearing in the General List.

Notwithstanding these positive comments, all of the registrars had reservations about resource implications and noted that CACs took an increased amount of their time, so that judicial officers were at the limit of their capacity and had to continually switch roles and functions.

These views are encapsulated in the following excerpts from the interviews:

“From the clients’ point of view, I would think that CAC is a much better way to have their first court event – much more user-friendly than the General List, which can be pretty daunting.”

“The combination of registrar with the legal skills and the counsellor with the social science approach is a lot more pro-active in moving people [to reassess their positions].”

Not surprisingly, some of the registrars thought of CACs within the purely legal framework of the Court:

“We have to remember that it has two purposes. One is to try and reach a settlement or at least identify the issues and the other is to determine how to progress the matter in the most appropriate way.”

In this regard, a number of registrars commented that it would be useful for some couples if there was the capacity for them to have more than a single CAC:

“As a case management tool, it would be good if we could have more than one CAC in some cases. However, this depends on whether there are slots available.”

Overall, the registrars’ views could be summarised as:

“CAC is a bit like Columbus – a good idea, but not resourced properly.”

3.2 Developing the CAC model

The majority of the registrars felt that the CACs had developed as they had anticipated and, in some instances, had exceeded their expectations notwithstanding the different approaches of the different registrars, counsellors, and lawyers. However, one of the registrars disagreed commenting:

“No. The original plan was quite a tight structure whereby the counsellors would see the clients for 45 minutes and then the registrar would join the conference for about 15 minutes to either endorse Minutes of Consent where the parties had settled or, if they hadn’t, to give them some sort of idea of what might happen next and then make directions. I think we have lost sight of the objectives of CAC – assessment and case management, or negotiation and settlement. I think the format needs to be reviewed.”

In this respect, the registrar was echoing the notion held by some of the other registrars that CACs had become more like conciliation conferences, and were being seen as such by some of the lawyers.

Those registrars who believed that CACs had developed as envisaged noted that opportunities for case management and the advantage of informal processes seemed to “*help more clients reach at least some agreement*”.

“I see CAC as a great chance to assess, narrow the issues or arguments, and manage a case through the system.”

A consistent observation was that many cases seemed to be settling earlier:

“My gut feeling is that there should be a higher settlement rate as many people seem to react well to the registrar being able to give them some idea of what might happen if they pursued the matter further in litigation.”

All of the registrars endorsed the concept, and advantages, of inter-disciplinary work especially in the early stages of the court process:

“The chance to have some time with the counsellor rather than getting straight into a court setting where everyone is nervous and overwhelmed is a great advantage for many couples. Often they never get to see inside a court, and that must produce better outcomes in the longer term.”

While endorsing this observation, many of the registrars also wondered whether those couples who made the most progress at CAC would also be those who reached agreement having been stood down for counselling from their first General List appearance.

3.3 Difficulties with the CAC model

In general the difficulties raised by the registrars included time management, lack of uniformity of practice between the different registrar and counsellor combinations, and defensive or aggressive lawyers.

“Managing the time can be problematic, as the registrar is trying to juggle other conferences around the morning CACs. The counsellor may spend a few more minutes with a couple who may potentially settle, but this has repercussions on the rest of the registrar’s work. So there is an element of juggling, and other conferences don’t get the attention that they deserve.”

The registrars generally agreed that the counsellors were doing a very good job. It became clear that there were some issues concerning practice consistency and individual style and preferences. For example, the registrars reported that some counsellors assume that the registrar is fully briefed when in fact they may not have been able to see the file before the CAC. To then be faced with a comment from the counsellor such as: ‘the registrar might like to tell you how the case might fare if it came before them in court’, can be quite disconcerting. Despite this, the registrars were confident that these differences had no major impact on outcomes:

“We all do things a bit differently, but I suspect that the outcomes are pretty consistent and that is what matters.”

While there was awareness of different styles and confidence in the professionalism of counsellors, there was a desire for better understanding of the counsellor's role in the CAC:

“I don't know what they actually do in their part of the CAC and have not had a chance to observe. So yes, there are definitely some training and orientation issues. Of course we do have a bit of a problem with the tension between consistent practice and judicial discretion as the independence of decision-making is central to our role as a registrar.”

Some of the registrars commented that having some way of observing other conferences and the ways in which their colleagues manage the process would be very good as a training aid and ideal for training lawyers (and counsellors) learning about work in the family law system.

There was acknowledgement of the effort that counsellors put into trying to achieve positive outcomes for couples, but also a real concern about the potential counsellor 'burn out'.

The registrars were generally supportive of the lawyers' input in the CACs and their levels of involvement. They did note differences between generic lawyers and family lawyers, and the need for education and training of the former.

“The specialist family lawyers are good but the generic lawyers, who only come in here a few times a year and don't really know the processes, can be problematic. They are the ones who tend to treat CACs like conciliation conferences and this sometimes means that the process loses clarity.”

“Most lawyers are pretty positive and understand what CAC is all about. Most of them try and focus their client's attention on settling. But they too have different styles, and I am sure that some clients feel that they are not being supported the way they envisaged.”

“In my experience, most of the lawyers have been very good and generally helpful. Although from some comments I have heard, I suspect that the counsellors might have a different perspective.”

The registrars felt that, on the whole, most of the lawyers see CAC as very positive and are quite serious about doing what is required. Most of them try to help the parties to resolve the matters.

3.4 Managing different clients

There are two tensions concerning client management – the self-represented litigant (SRL), and involving peripheral parties such as stepparents or grandparents in the CAC process.

The registrars felt that generally CACs were good for SRLs. Some noted that there are two different types of SRL – the ‘freshmen’ who are still malleable and able to be worked with or convinced that to settle at this point is the least destructive option, and the ‘recidivists’ who are so entrenched that nothing is going to convince them that they should not have their day in court.

“I think CACs are really good for SRLs and I suspect that we are getting about a 60% success rate with these people. The early intervention with a counsellor is very beneficial to many of these people who just need a chance to be heard. So, this is where I think the CACs are really working.”

“For SRLs, the CAC has great scope to assist them – to reaffirm positions and to guide people through the system and explain the process. They can also be directed as to where to get assistance from external agencies.”

In this respect, the registrars reported that they relied on the counsellor’s knowledge of the services available and their recommendations regarding appropriate referrals.

This in turn raised the issue of somehow assessing cases for suitability for a CAC. There was general consensus that this becomes complex in terms of establishing criteria for inclusion or exclusion, and essentially adds another process that has significant resource implications. The overall view was that:

“First time applicants should always have a CAC as the first event (except in exceptional circumstances). Some box file matters bringing a new application might benefit, but it would depend on the issues and the CAC would need to be well controlled. The most difficult ones are the mid range who have been in a few times – recidivists – for these people, the CAC is a waste of resources and the rigidity of the legal process is required to control the case.”

In respect of including a third party such as stepparents and grandparents in the CAC process, the registrars acknowledged the influence that such people might have on both the process and the outcome. The consistent view was such people could only be involved provided that both litigants (and their lawyers) agree, and this seldom happens. However, the practicalities of including third parties without complicating the dynamics of the conference caused some concern for all of the registrars.

“I appreciate that others such as stepparents are often very much involved and can be a big influence on the durability of the outcome. This is obviously an issue that we will have to keep under review, especially as the CCP develops.”

“I think we have to be a bit flexible on this – it can work really well. But having too many people wanting to have a say is problematic, and again there is that time factor – you just do not have time.”

3.5 Administrative aspects

Registrars had different approaches to preparing for CACs based on their experience and personal style. Therefore the major administrative aspects that were noted centred on the availability of files and time-frames of conference scheduling. Some registrars were concerned about lack of access to the files (due to timing and their other commitments) while others were less emphatic of their need to peruse the file before being briefed by the counsellor.

“The fact that there is only one file can be a complication, as often it is difficult to prepare yourself properly because the file is up with counselling during the only spare time you have for preparation.”

“The time frame challenges. Doing three CACs in the same timeframe means that you don’t give everyone the time they probably need. This is a resource issue, but it would be good to have just a bit more flexibility.”

3.6 The positive aspects of CAC

The registrars consistently identified a number of positive aspects of the CAC process:

- effectiveness of the counsellor and registrar combination,
- more effective outcomes,
- better identification of issues,
- changed attitudes about the role of the court,
- increased early settlement rates,
- better use of judicial resources by being able to spread the load of complex cases that subsequently require judicial determination, and
- reduction in the number of cases being managed in the General List (GL) with better outcomes for those clients too.

One of the registrars summarised these aspects:

“There is much better progress [in negotiations] with the synergy of the counsellor/registrar teams, and you have two professionals working to help the clients. The registrar is better able to case manage those cases that don’t settle, as there is more time [than in the GL] to explain what the next steps are and how long each of them might take. The clients get to spend some time with you and speak directly to the registrar, which they often do not do in the GL. There is just that bit more time to hear what they are saying in a less formal and intimidating atmosphere – and I think that the outcomes are often more effective.”

3.7 Improving CAC

In terms of improving the CAC process, the registrars raised the following:

- fewer conferences per day,
- sufficient resources (funding) to allow it to be done properly, and
- ensuring compliance with Pre-Action Procedures (PAP).

One specific aspect of improving CAC that may require further consideration was the afternoon joint conference that incorporated both children's issues and financial matters. As one of the registrars noted:

“If the 1415 CAC(J) [joint child-related and financial issues] was reassessed so that the registrar took charge at the beginning (rather than often not being asked to join the conference until about 1515) I could run two afternoon conferences. In cases where there were unresolved children's issues emerged during a CAC(J) the registrar could order a separate S62F counselling conference on another day.

He continued:

This would allow two extended CACs daily, with the registrar doing one less morning CC but an additional afternoon one. Of course, an additional registrar would more than cover this but the reduction in Form 1 CACs would probably cover all Form 2 applications except the obvious urgent matters. This would obviously have some implications for listings.”

The following comments encapsulate the registrars' views on the value of the CAC process in assisting distressed couples to address and, in many cases, resolve their issues:

“It is an unfortunate reality that many people are just not ready to settle at CAC. For many, something has upset existing arrangements and they need an opportunity to vent their frustration and settle down a bit. So, many are not ready to sort things out in one go. I suspect that one significant outcome of CACs will be a higher settlement rate in conciliation conferences – they have had some time to think about things and, many appear to come to conciliation conferences with a quite a different attitude – they are better prepared and able to negotiate.”

“I would like to see the CAC process extended to the OCL [Orders Contravention List] and SML [Summary Maintenance List], which are essentially trials. Many people are in these lists because they want to change something and think they have to prove that something is wrong in order to change their orders. I know this is also a resource issue, but I think we need to assess this aspect.”

3.8 Conclusions: Registrars

The nature of their judicial role within the family law system means that registrars have to manage the tensions between:

- the formal requirements of the legal process and their duty to the Court,
- the concept of judicial discretion and the ideal of consistent practice in an interdisciplinary team,
- their experience in managing difficult clients within the less formal CAC framework and the need for prescribed frameworks and procedures,
- their work-loads,
- their individual temperaments and approaches to less formal court processes, and
- their underlying desire to assist couples.

The complexities of these tensions were evident in almost every discussion with the registrars during this evaluation. However, the overall view of the registrars was that CAC has provided some significant benefits to many clients and is having some positive impact on other areas of their work.

There would appear to be room for considering slight revisions to listing issues so that registrars are better able to manage the other conferences that are running concurrently with the CACs. This may have some resource implications in terms of conference rooms and the availability of counselling staff.

The tension between judicial discretion and consistent practice in a less formal setting such as CAC. This could be addressed by more in-house training so that the flexibility of various social science perspectives can be incorporated and accommodated within the legal framework.

The data in the previous chapter establish that over half of the matters before the court involve peripheral parties such as new partners or grandparents who have a vested interest in the outcome of proceedings. Notwithstanding the misgivings about overly complicating negotiations, it would seem that there is a need to review the policies and processes for involving 'significant others' in the court proceedings.

Chapter 4

Professional Stakeholder Feedback: Counsellors

Ten of the eleven counsellors available in the latter part of 2005 provided in-depth reflections on the CAC process, their role in it, and their experiences of the process.

4.1 The CAC process

The counsellors were very aware of the formal procedural guidelines for the conduct of the CAC (see Appendix A), and the five phases within the process:

- engagement and introduction;
- clarification and (risk) assessment;
- discussion and negotiation;
- planning and case management; and
- the procedural hearing conducted with the registrar.

Indeed, many of the counsellors viewed these guidelines, and particularly the inherent risk assessment, as distinguishing the CAC from all other aspects of their work in FCWA. The counsellors regarded the procedural guidelines as a mechanism for quality assurance and standardisation of practice. All of the counsellors reported that they used the guidelines as the basis of their practice, although some noted that they sometimes deviated from them depending on the nature of the case they were dealing with:

“You need to stick to them because it’s a legal procedure, and so it’s a court event. And everybody has to be seen to be doing the same things.”

In addition to the procedural guidelines, the counsellors also developed an informal guide as to the way in which the CAC might process (see Appendix B). This guide included phrases and probes to cover things such as the purpose of the CAC, that the discussions are confidential (not admissible in evidence), the CAC timeframe, and a general explanation of the process. This informal guide was subsequently placed in the CAC rooms “*as a prompt for people, and also to keep clients on track as well*”.

The CAC pro-forma also made provision for the counsellor to note information about the clients and their issues that could be identified from the case file (which is usually with the registrar by the time the CAC convenes). All but one of the counsellors said that they used this form, although many reported that they had made minor adaptations that reflected their approach to the CAC.

The counsellors reported that they tried to allow between fifteen and thirty minutes to prepare for a CAC, although this too could vary depending on the size of the file and the nature of the issues in dispute.

At the time of the interviews (late 2005), many of the counsellors reported that they had some difficulties with the risk assessment component of the pro-forma. Some used the pro-forma as a check list while others used it as a guide to a conversation about issues of concern to the parties. Although all of the counsellors said that they were quite direct in their approach to assessing risk, they noted two factors that often impinged on their assessment. The first of these factors was the context of the violence:

“In many cases, where there’s been violence after the separation but there hasn’t been violence in the marriage itself, the violence has often been the result of frustration about not seeing the children. So, you have to keep it in perspective.”

The second factor was different societal (and sometimes cultural) interpretation of what constitutes violence:

“When you ask about violence, some people think that means stabbing and murdering – they don’t necessarily think the fact that they shoved their partner down the stairs counts. So, you have to be very blunt and up front.”

Some of the counsellors also made the point that, in the absence of supporting documentation, the risk assessment is based purely on the responses of the parties and there is little opportunity for corroboration of allegations. The counsellors noted that many clients found the concept of a risk assessment very confronting and, in some instances, felt that this part of the process exacerbated the dispute and reduced the opportunities for resolution:

“In some cases, clients have made an assumption when they’ve been asked these questions that someone’s complained. They think if you’ve bought up, she bought up or he bought it up, what has he said about me? So, you need to be really conscious about how you bring it up.”

Notwithstanding these reservations, there was general agreement that the “*whole point of this assessment is to make sure that you’re not overlooking these factors*”.

Many of the counsellors were concerned that the (then) current pro-formas did not fully address the issue of risk to children but rather limited them to potentially identifying warning signs. However, they cautioned that this assessment was based entirely upon limited information provided by the parents. Some of the counsellors reported that in cases where they had concerns, they tried to arrange for follow-up appointments so that they could explore the issues in more depth.

4.2 The CAC clients

The counsellors identified two main groups of clients:

- recently separated couples where most of the emotion is centred on the adult issues inherent in the separation rather than on the children's needs; and
- couples who have been separated for some time and there have been ongoing problems with contact that have now come to a head, or that a new partner has joined one or other of the parents and this has upset the standing arrangements.

The counsellors maintained that the CAC was not the place to address the emotional issues associated with "the pain and hate" associated with separation. Some said that they would schedule a follow-up meeting to identify and possibly address these issues. However, the preferred position was that such couples should be referred out to specialist counselling agencies and services. In CACs involving these types of clients, the counsellors reported that they tended to acknowledge the couples' difficulties and the pain associated with that but to remind them that the aim of the CAC is "*trying to assess risk to the children, and trying to resolve the issues, so they don't have to go into court and argue in court for ages*".

One counsellor raised the issue of assessing the support available to the clients:

"Some of these people are very fragile and, if they've got no family here in WA and, yet their ex-partner does, it's not taken into account. It can make a big difference to how things go for that person. So, I think we need to know this stuff too."

In terms of the second group of clients, many of the counsellors were of the view that they had come to court because these parents had no mechanism for communication or collaboration and they simply needed a decision, and "*a lot of them get very upset that no agreement is reached, and they're not getting a decision that day*".

All of the counsellors reported that they often referred clients to external services, although they tended to limit these to services that did not require an extensive formal referral process (again due to time constraints). In some cases, they recommended that attendance at courses or services should be included in various Orders but left the actual inclusion of these recommendations to the registrar.

Throughout the discussion on both the initial assessment and the management of clients, all of the counsellors stressed that the time limitations of the CAC process precluded in-depth exploration and discussion of issues. There was some acknowledgement that the CAC process takes the focus off the adversarial system by giving the parents:

"Some sense, firstly, of being heard and, secondly, of getting some feedback about and re-focusing back onto the child and the child's needs."

Similarly, in terms of being able to explore the practicalities of various arrangements that clients might propose, the counsellors all agreed that there was insufficient time in the CAC for this. Some counsellors said that about the best they could hope for was that the clients realised that there might be unforeseen implications of their agreements, and that they could always change them if they did not work.

The counsellors were very aware that few clients knew what they were coming in to. They reported that some clients thought that they were attending a criminal trial and had prepared accordingly, but:

“Most of them are absolutely bewildered. They don’t know why they’re there and they don’t know what they want. They expect someone to make a decision and find that they are right and blameless, and the other person is wrong. Or that they can walk out with it all solved. So, when neither of these happen, they’re utterly frustrated.”

The counsellors reported that any misgivings they had had about lawyers attending CACs had been almost entirely misplaced and that most lawyers were “*very focused on trying to help their clients negotiate*” and, in many cases, helped the counsellor to draft Minutes of Consent or the orders that the registrar might consider.

4.2.1 Unrepresented clients

Unrepresented clients present a number of challenges throughout the legal system. This is particularly so in family law when one party is represented and the other is not and so the counsellor (or judicial officer) has to be especially conscious of the power differential and, often, differing levels of understanding of both the process and the outcomes.

The counsellors generally agreed that, provided the lawyers were supportive of the CAC process, in most cases they find it easier when both parties have legal representation. As one counsellor commented:

“My preference is to have client legally represented. I think it provides some safeguards for counsellors in terms of accountability and transparency. I just have a sense, I never thought I’d say this, that there’s more equity and fairness when they’re represented. It would be nice if everybody could get legal aid.”

Some counsellors reported that they found it easier to focus on the issues when there is legal representation but sometimes harder to focus on the personal dynamics are. Others also reported that it is easier to stay within the timeframes when there is legal representation.

The availability of almost immediate legal advice through the on-site Legal Aid office was acknowledged by all of the counsellors as being an invaluable resource when one party was not represented and seemed to be at a significant disadvantage. Many of the counsellors reported that, in situations where only one party was legally represented, the lawyer often:

“Works on behalf of the couple. They have really been a help, as very often they will explain the realities to the couple; and they take the position of ‘the best thing for me to do for my client is to be good to you and to do that I need to do this’. I have had them draft up the Minutes of Consent in the CAC itself.”

All of the counsellors confirmed that, in situations where one party was not represented, that they had to be very conscious of maintaining their impartial role and not becoming “*the voice of the unrepresented client*”.

Most of the counsellors reported that, in situations where neither party has legal representation it is sometimes easier to work with the couple although many self-represented clients are not as focussed as those who have had legal advice. However, in these unrepresented cases more time had to be allocated to “*hearing the stories*” and checking information as the court documentation is often not as accurate as it should be.

The counsellors also reported that unrepresented litigants often have very unrealistic expectations about the role of the Family Court, and assume that the court has an investigative capacity to obtain and/or verify evidence as if it were a criminal investigation.

A number of counsellors noted that a further complicating factor was:

“When they’ve had no legal advice, and they don’t know what to agree to. You can’t do anything with it, because you could push them into an agreement very easily, but it’s dangerous, and I think it’s a violation of people’s rights. So, that’s when I send them across to Legal Aid.”

One issue that many counsellors raised in respect of unrepresented litigants was that such clients “*sometimes become inappropriate [threatening or obstructive] in their behaviour*” and this requires a different management approach.

4.3 Working with CAC clients

There was total agreement among the counsellors that the clients came to the CAC wanting (and anticipating) confirmation of their position and views – “*they are right and, their partner is stupid*”; together with immediate resolution with a reasonable outcome. However, as many of the counsellors observed, “*what they want is different from what they need*”.

The counsellors identified a range of things that they felt that clients need, including:

- to have the time to explore what they do need;
- a safe sort of forum in which they have the opportunity to discuss concerns;
- information about FCWA processes;
- an opportunity to hear it, to talk, to actually say their story;
- a greater understanding of what they (and their partner) are going through;
- a greater understanding of what the children are going through;
- refocus on the needs for their children;
- a lot of support;
- a patient and empathetic listener;
- impartiality; and
- reality.

The counsellors agreed that, for most couples, the CAC is not the forum to address these needs. In some cases, some facets can be addressed in follow-up counselling conferences.

However, almost all of these needs are more properly addressed in the programs and services provided by external agencies within the Commonwealth's Family and Relationship Services Program (FRSP) and, indeed, the new (since July 2006) Family Relationship Centres.

The counsellors identified three aspects that they felt were lacking in the way that clients were prepared for their first court event (CAC); lack of knowledge about the CAC process, the court documentation, and the role of lawyers.

There was general agreement that most clients do not have a clear understanding of what the CAC is about, that they are going to be expected to negotiate rather than walking in with their set point of view and that, unless they come to some agreement, they will not get a determination of their dispute that day. Counsellors were unsure of the information (then) being provided to clients, but suggested additional resources such as *"pamphlets and short videos/DVDs to be viewed when making an application to the Court"*. Such resources should also be available in community services, medical practices, ethnic community groups, and churches. Similar audio-visual material could be made available on various websites, including the Family Court, and the Family Relationship Centres.

In terms of documentation, there was some suggestion that, at least in the initial application, some form of information sheet outlining the *"dynamics of the situation, who's involved, who the people are, and how they fit"* might be more useful than lengthy affidavits.

The counsellors also felt that lawyers could *"focus their client's attention more on this as an opportunity to negotiate and to negotiate, an outcome that is good for children"*. There was also the acknowledgement that *"some people pay no attention to what their lawyers tell them, so they will always be a challenge"*.

There was general consensus that most people have little idea of the types of services and programs that are available to assist people through the separation process. As one counsellor observed:

"Basically, people don't want to know about this sort of stuff, unless they are in it. And I don't think the community adequately knows how to deal with these people, quite frankly."

Not surprisingly, the counsellors reported that most of the people they see in CAC have seen the Family Court as the first and often only option to addressing and resolving their disputes. Some counsellors saw the new Family Relationship Centres as the logical source of such information and education programs but with some reservations:

"My concern is with that awareness comes more demand for service delivery out there, and I don't think the services are geared up enough or even have the skills and experienced staff to manage these people. I think it's really problematic."

This counsellor went on to suggest that it might be necessary for the Family Court to temporarily assign some of the counsellors to the various agencies in order to train staff and ensure the accuracy of information that was being provided by the agencies.

Two other suggestions from counsellors included:

- revision of the Family Court’s ‘Information Session’ to include the audiovisual introduction to CAC noted earlier, and
- appointment of a designated counsellor as community liaison or education officer to promote community awareness of the Family Court and its processes

4.4 Working with the registrars

The counsellors agreed that the registrars were generally very good and supportive in the CAC process. One comment was typical of this view:

“Some of them are just absolutely brilliant with helping the client understand the realities of the case. They are very patient with the self-represented applicants. They take their time. They go over and over it. They do a great job.”

The counsellors appreciated registrars who:

“Listen to the preamble, join with the conference, and contribute to the negotiation in a collaborative way and, when appropriate, use the authority of the court in a constructive way to encourage conciliation and cooperation – but who are also conscious of the possibility of risk to children or adults.”

The counsellors particularly commented on the value of the registrar being able to provide a ‘reality check’ and “*explain to people what’s likely to happen should the matter go to court*”.

All of the counsellors commented on their frustration when registrars had not read the case file. Some interpreted this as a failure to take responsibility for their part in the CAC process, although all counsellors also acknowledged the pressure under which the registrars work. As one counsellor commented:

“How do you tell the man who’s got ten conferences a day to read his files. You know, when they have a chance, they are better prepared.”

In these circumstances, the counsellors reported that sometimes it seemed as if the registrar felt pressured to “*grab whatever was on offer*” in order to progress to their next appointment.

The counsellors also appreciated situations where the registrar encouraged discussion and gave clients and opportunity to have their say and, if a Minute of Consent was being drafted, being prepared to check the Minute.

The counsellors reported being especially frustrated if the registrar did not listen to what they had done or established, but attempted to recover the same ground again or pushed clients to agreements when the counsellor had established that such a proposal was unlikely to work.

Like the registrars, the counsellors also mentioned the frustrations of the scheduling of the CACs, especially when they had managed to complete their part of the CAC but then had to wait for the registrar.

In terms of improving the CAC process, some counsellors suggested that being able to have a close working relationship with the registrar and discuss possible case management options before the CAC would be an ideal in terms of collaboration.

Finally, one counsellor observed that people needed to be aware that:

“You cannot just assume that because there hasn’t been progress made today, that progress will not be made again.”

A number of counsellors advised that their role would be much simpler if all aspects of the CAC were declared ‘reportable’ (not confidential from the Court), and so could be discussed with the presiding magistrate. The counsellors reported that they felt confident to advise the registrar when they needed active guidance on an issue on which they were unsure.

4.5 Working with lawyers

When asked to consider the contributions that lawyers had made to the CAC process, the general view was that “*the majority of them have been really very good, very appropriate*”, and that “*they have been really fair-minded and respectful and try to come up with compromises*”.

From their perspective, the counsellors regarded lawyers as doing a good job when they:

“Listen to your assessment. Listen to what you’re trying to do in terms of negotiation, and take part in the negotiation, and talk reason to their client, and explain when a proposition seems reasonable. And [when] they control and contain their client.”

On the other hand, the counsellors saw lawyers as being obstructive when they:

- create the adversarial process;
- sabotage the negotiation process;
- bully an unrepresented other side party;
- treat the other client as though they are useless;
- are not child-focused but rather promote their client’s right regardless;
- speak for their client and never allow their client to speak; and
- focus on the legal points rather than trying to resolve the issue.

4.6 Managing external referrals

In discussing referrals to external services, the counsellors all supported the concept but then described a rather ad hoc system of keeping themselves informed of what services were available or the individual referral processes. Although there is a published list of agencies, some counsellors also kept their own resources. The counsellors made the following suggestions to improve the situation:

- Invite more service providers to give briefings at work practice meetings;
- Make provision for counsellors to visit services and agencies to observe services (such as the Child Support Agency, Legal Aid's ADR, Anglicare(WA)'s *Mums and Dads Forever* and the mediation program offered by Centrecare and Relationships Australia); and
- Develop a specific web site where all the agencies that provide services in the family law network could keep their information up to date.

The counsellors noted that having access to this type of information will become even more important in the new (post-July 2006) family law system where, as Family Consultants, they will have to inform the parties and magistrate about the range of services available.

4.7 Tensions in the counsellor's role

The counsellors were invited to reflect on the ways in which CAC had impacted on their role in terms of levels of responsibility, accountability, or confidence. Some reported that they struggled with the shift from counselling to being more of a mediator and more integrally involved in the court process.

Some of the counsellors reported that the CAC process has led to a new level of responsibility, as working with lawyers has meant that their practice is now very visible and so become more accountable. One counsellor summarised the situation:

“Your work is so blatantly under the microscope and exposed. There's no other counselling field that has the level of transparency that this job does. Your work is available to the judiciary, available to the clients, and it's available to their legal representatives. You have to be prepared to go, and stand in the dock and be cross examined. I think it's great, it's healthy, it's quite refreshing, actually. It makes you think. You can't be complacent.”

Almost all of the counsellors stressed the need for thorough preparation before each CAC, especially as they were often required to make decisions based on incomplete (and sometimes biased) information from both parties. For many counsellors, developing the confidence to make such decisions and assessments led to a greater sense of their own professionalism and their ability to work with other professionals (lawyers).

Counsellors reported that the most difficult aspect of their role was trying to achieve the aims of CAC within a very short timeframe, although one counsellor thought that this had an advantage because “*it is time limited and focused on assessment, so it's very goal-oriented*”.

The counsellors reported a range of other difficulties including:

- keeping up on the file reading and making case notes;
- information about what services are available – “*including internet access on the CAC room computers*”;
- knowing what will happen if they do not reach agreement – “*and it's very hard to convince people when they haven't experienced it*”;
- opening up of very difficult topics, and then not addressing that issue – “*very difficult when you've got people who are crying and upset*”;

- managing the ever present gender issues, and gender politics, that pervade the whole field in this area – “*constantly balancing out issues of access, equity, power and control, intimidation*”, and
- difficult lawyers.

A number of counsellors raised the issue of pressure, suggesting that two CACs a day would ease some of the pressure in terms of preparation and writing up case notes especially in complex multi-faceted cases.

Notwithstanding these difficulties, the counsellors reported that they found many CACs very rewarding especially when:

“You’re actually able to assist people to not only to reach an agreement that’s going to work for them but also to avoid a court process, and avoid potential future conflict.”

“Some of them think that, because they are divorced or separated they have to hate each other. And you show them that they can respect each other and deal with this in an agreeable way.”

Some of the counsellors appreciated the flexibility to bringing clients back for a follow-up counselling conference rather than merely referring the matter to the General List. Almost all of the counsellors commented on supportive working environment and the collegial relationships within the Court.

When asked to identify their primary aims in the CAC process, all of the counsellors stated that assessing risk factors and the issues in dispute were their primary aims. Other aims were identified as:

- engaging with the people,
- helping them feel that they have been heard,
- determining whether there is an opportunity for negotiation,
- helping them negotiate where possible,
- making appropriate referrals,
- develop some sort of road-map to look at the future, and
- getting them out of the court system as quickly as possible.

In terms of strategies required to conduct a CAC, all of the counsellors emphasised the need to “*follow the procedure, be clear on the purpose, be problem-solving focused, and to stay very focused*”. They also emphasised that, to achieve this ideal was the need for as much detailed planning and preparation as possible.

The counsellors identified the following skill-set that they draw on either consciously or sub-consciously during the CAC process:

- good engagement skills to establish rapport quickly,
- interpersonal skills to manage the clients and lawyers,
- counselling skills,
- analytical skills to reframe complex issues in a nutshell,
- conflict resolution skills
- problem-solving skills,
- mediation skills,
- containment skills, and
- flexibility of approach.

4.8 Advice to a new colleague

When asked how they might advise a new colleague about the conduct of a CAC, the counsellors offered the following suggestions:

- follow the procedure;
- control the lawyers;
- give both clients an opportunity to have their voice
- keep in mind that the purpose of the CAC is to assess, to plan and, if they make a resolution, then that's great, but that is not the primary purpose of CAC;
- work with the registrar, and make sure the registrar is part of that process;
- think about the whole of the family;
- remember that whatever recommendations are being made have implications for the child;
- let the clients know what is going on;
- do your risk assessment early in the CAC, – “*get it out of the way*”;
- keep your goals in mind, and keep your time frame in mind, and don't be unrealistic;
- go with your gut feeling, – “*try to get to the person, a lot of what we do is intuitive*”;
- emphasise the CAC as an assessment procedure rather than a negotiation;
- observe what other people actually do and, – “*what works and what doesn't work, what seems to work*”;
- be well prepared in terms of getting the information from the file;
- be prepared in terms of the process so that you are comfortable with the process, have some sort of consistency of approach; and
- be flexible.

All of which were summarised by one counsellor as:

“Keep to a strict format to remind themselves of the phases of this meeting, and be very clear within themselves what is this about. If it is about assessment, let it be such. If it's about discussing whether or not the problem that's presented is likely to be resolved with further discussion, then proceed accordingly – but be clear about the aim.”

4.9 Future developments

In terms of looking ahead, the counsellors were well aware of the changes in family law, court processes, and the family law sector that were being mooted for July 2006. Many saw these changes as an opportunity to make the family law system more inquisitorial with expanded input from counsellors:

“An extension of what we started with Columbus, and have done in CAC, so that we assess and individually manage cases through the system as expeditiously as possible”.

Many of the counsellors suggested that, by individually managing a case from intake through to trial (if necessary), they could monitor referrals to external agencies and, where necessary, obtain the relevant feedback and report this to the judicial officer.

The counsellors had varying understandings of the term ‘therapeutic jurisprudence’ but almost all agreed that the theory was appropriate to inform the current family law reform agenda.

Most of the counsellors were supportive of the concept of Family Relationship Centres, where couples could access services without an expectation of going to court. However, the counsellors had two significant reservations about the FRC. The first reservation was lack of training, expertise, and experience that is probably available among the people who will be recruited to run the Centre. The second reservation was that the couples who currently manage to establish some form of cooperative post-separation parenting relationship will be the bulk of the FRC clientele while those parents who cannot achieve this relationship will still come to FCWA. In this probable scenario, the counsellors saw their future role as only dealing with high conflict, multi-problem families with little prospect of meeting “*decent people who are just a bit stuck and need a bit of help*”.

Chapter 5

Professional Stakeholder Feedback: Lawyers

Twelve experienced family lawyers provided feedback during in-depth interviews with the evaluators. The following analysis is also informed by feedback from the many legal practitioners who have chatted to the evaluation team informally over the past two years.

5.1 Rationale of CAC

The lawyers had different views as to why CACs were actually introduced but they universally supported the process, especially in children's matters to assist in identifying issues at an early stage. The informality of the process and involvement of the counsellor together with the opportunity for clients to put their side of the story are perceived by the lawyers as core elements which are assisting parents to clarify matters and, in many cases, move towards some form of agreement without the matter proceeding into the more formal litigation process.

Because the lawyers were generally not cognisant of the rationale for CAC, they were equally unclear as to whether CACs are achieving the objectives that the Court had established. However, there was general consensus that the CAC(C) was facilitating many earlier settlements and, even if matters did not settle at the CAC, the process stimulated more positive thinking and many clients subsequently settled before they got emmeshed in the litigation process.

Different issues are emerging in respect of the financial CACs which are conducted by the registrars alone. This process has more complex issues around disclosure of information and the timely submission of various forms.

5.2 Impact on legal practice

There were differing views on whether the CACs had affected the lawyers' work. Some saw the opportunity to identify, clarify, and discuss issues early as very positive and potentially reducing costs to clients. Others considered that the CAC required them to spend more time at the Court and, if matters did not settle at CAC then this increased the lawyers' subsequent workload.

Most of the lawyers thought that having some standardised documentation for the CAC could assist all parties to identify the issues, to focus the parents, and to provide a framework (agenda) for the conference. Others thought that such a document was superfluous as existing documentation (such as affidavits) should be sufficient, "*yet another bloody form that clogs up the court file*" and, more work for lawyers.

When asked whether they thought that CAC was the appropriate first court event in all cases, some of the lawyers agreed on the basis that;

“Most of the time you at least get some agreement I think if you get some agreement it’s better than no agreement and that even just focussing the clients on the issues is helpful.”

However, in situations where a party has not complied with filing requirements or is being unrealistic and obstructing progress, the lawyers thought that the Court should make firm directions early, including the imposition of sanctions and penalties. In such situations, the lawyers considered that the counsellor had to exercise their authority and involve the registrar early rather than attempt to negotiate with the parties. The lawyers also felt that this type of situation was less likely when both parties were represented and the registrar applied firm direction to the process.

One of the participants also commented on the socio-demographic nature of CAC:

“They tend to work better obviously where there are less complex child welfare issues. In ones where both parents are quite intelligent, well educated, but there is just genuine disputes about the way they think that contact and stuff can be managed. It was helpful there, because they understood why they were there and it was a useful process. But really with the kind of more complex matters and where you’ve got people who are, you know, are from a really low socioeconomic, who really lack insight or there’s DV or complex social issues, a standardized approach like a CAC is not going to be useful in a case like that.”

In terms of CAC reducing clients’ reliance on lawyers, there was unanimous agreement that people will always need to be informed of their rights, that family lawyers take pride in seeking to resolve matters outside of court, and that those who do not utilise a lawyer often find themselves paying more later as they seek to “*tidy up the mess*” of wrongly worded agreements.

5.3 Managing clients

When asked how they prepared their clients for court proceedings, the lawyers reported that they took their obligation to adequately prepare their clients very seriously. All reported that they discussed the various court processes in considerable detail, although often in very basic terms. Some described the CAC as a mediation session and stressed that it is a good opportunity to resolve matters. Some lawyers reported providing pamphlets and brochures describing court processes, although others took the view that you should “*certainly don’t give them anything to read*”.

One suggestion regarding informing clients was an interactive video:

“There’s a really big need for some good videos that take people through the process - what is a CAC, what is a conciliation conference, what happens at a trial. If we could have that information in an audio visual form and show it, it would be fantastic. It might be a worthwhile combined project for the family court and the family law practitioners association and even people like ECU [sic: Edith Cowan University], to produce. It will take a bit of money to do it well, but not a huge amount.”

Many of the lawyers stated that they advised clients to think about what might be appropriate or more realistic expectations, and acceptable outcomes especially in children's matters often by:

“Trying to get them thinking about where the other person's coming from and trying to get them thinking about what alternatives they might accept, even though they don't like it but that they could live with.”

In doing this, one of the lawyers said that he also advised clients that *“it's better for people to agree themselves than have court based outcomes”*.

In addition to checking that the clients knew the documentation requirements, some lawyers also discussed how some of the registrars approached various cases – again with a view to reinforcing realistic expectations.

Some of the lawyers reported that they had some difficulty explaining the risk screening component of the CAC to their clients. One considered that *“those risk factors really should be identified in the papers”*. Another lawyer questioned the relevance of asking about issues that had never been raised, feeling that this upset some clients.

When asked what they thought the clients wanted in terms of outcomes, the lawyers were almost unanimous in the view that most clients just want a decision that will resolve their problem:

“I think a lot of them would like to have a full resolution of the problem. But some would be quite happy if they got some agreement, or if they can't reach any agreement at all at least know what the real issues.”

However, as one lawyer said, *“they want decisions yes, but the trouble is at that stage they probably want them in their favour”*. Others felt that *“most would like to have a full agreement but, if they can't reach any agreement at all, at least know what the real issues are”*.

The lawyers reported many different aspects of their role in the CAC (and court process) including preparation of draft consent orders, managing the inherent tensions within a legal system where there is no certainty of outcomes, as well as providing options and encouraging compromise in order to obtain reasonable outcomes. Most were keenly aware that, for many clients, the opportunity to *“vent their spleen”* was an essential part of the resolution process. They were also very aware that there were some clients who had no intention of settling but rather wanted to continue the fight.

Two particular issues were raised:

- some clients *“abandoned all responsibility to their lawyer”*. This was seen as dangerous as these clients tended to avoid facing any issue or responsibility for attempting to resolve a matter; and
- in some cases there was such a power imbalance between the parties that CAC was not appropriate. The CAC was very useful to identify cases where there has been violence or a lack of genuine commitment to resolution.

When asked to consider differences in clients, the lawyers readily described those who they enjoyed working with and those who they found difficult. Clients that they found best were those “*who want to come to some agreement and are prepared to look at both sides and perhaps try to bend a little bit*” and those who “*respect your professional opinion, give clear instructions and listen to your advice*”.

The most difficult clients were identified as those who:

“Have very strong views to start with and any amount of moving away from their position will seem to be a weakness on their part. These people see taking the matter to court as their right.”

Some of the lawyers agreed that highly emotional clients could be very difficult especially those who had not come to terms with the end of a relationship – these clients were seen as being quite ‘needy’ and demanding.

Finally, unrealistic clients were also seen as very difficult. One lawyer observed:

“The costs are always higher for them. They don’t realize it, but they’re actually making it more expensive for themselves then they blame the lawyers.”

5.4 The lawyers’ aim in CAC

The lawyers were asked to consider their aim in the CAC, what outcomes they tried to achieve, and what they might consider to be a successful outcome. All of the participants agreed that they were trying to achieve some form of “*agreement that my client can live with*” or “*if they can’t agree, at least know what they are facing if it continues then that’s an outcome in itself*”. Some of the lawyers qualified this view commenting:

“The key is not just reaching an agreement, but reaching a workable agreement, that is practical and I feel that the parties in question can comply with.”

One of the lawyers reported that he was happy to achieve a short term agreement and then use that as a basis for further negotiation with a view to achieving a settlement.

5.5 Lawyer’s skills and training

In terms of the skills required of lawyers in the CAC process, there was general agreement on the need to promote a mediated outcome where at all possible, although there was still an element of protecting their client’s interest, especially if there were extreme proposals being presented for consideration. The lawyers who provided this feedback suggested that, in many ways, their role was more akin to a counsellor during the CAC phase of a case and they did not really begin to use their purely legal skills until matters were listed for trial. In this respect, there was consensus that in CAC the lawyers had to let their clients do as much of the talking as possible. This highlighted an inherent tension for some of the lawyers, as one noted:

“Most of us work both as negotiators and litigators, and that actually has some conflict [in CAC], because it’s quite difficult at times to not become a litigator, not to try and advocate for your client but to find solutions. And you have to manage your client’s expectations too, they want you to advocate for them.”

Most of the lawyers agreed that mediation and negotiation skills were essential, especially when the outcome may not meet a client’s expectations. In these terms, the skill was to *“persuade a person that an agreement with something less than what they wanted is always better than proceeding on with nothing”*. There was unanimous agreement that mediation and negotiation skills were essential for all lawyers and that there is *“a crying need for more training in that area”*.

One of the lawyers commented that such skills became even more important when one of the parties in a CAC was self-represented, and in these circumstances he felt that he had to put a lot more energy into the conference. However, the potential for promoting creative options was seen as adding a new dimension to the skill sets required of lawyers in this setting.

All of the lawyers who provided feedback to the evaluators reported that they were equally comfortable with the informality of the CAC process or the more formal court room aspects of their work. They generally agreed that there were different demands in the two settings but had few difficulties with these, although some thought that CACs were *“more demanding than a court argument”*.

5.6 Relationships with the counsellors

All of the lawyers who participated in the evaluation commented on the benefits of having the court counsellor involved in the case, especially as *“lots of issues about kids that aren’t legal issues”*. The following comments typify these views:

“I like the interaction with counsellors particularly, because I think we can complement each other.”

“It’s good to have the court counsellors involved because I think they’ve got a more of an insight, especially in children’s issues, than the lawyers.”

“I’m always astounded by the good sense that the counsellors seem to have.”

“I quite like listening to the counsellors, what they say, how they say it. Also, just observing how different counsellors approach different cases, how they approach different people, how they say things.”

“I always listen for comments that they may make about children, how children of different ages deal with different aspects of the family law process when they talk about behaviour that is concerning a parent as quite typical for a child of this age in this setting. It is never a ‘one size fits all’ - children are never the same, but it’s useful to hear what’s happening and what the counsellors are aware of.”

Another of the lawyers summed up his thoughts:

“I think CAC is a terrific process and, so I do enjoy it, because the punters walk, you walk away, feeling like things are under control and on track. It’s just better for the clients.”

Some of these lawyers admitted that they had been somewhat sceptical about the CAC process and how it might evolve, but most reported that they were pleasantly surprised at the outcomes they had observed. As one lawyer explained:

“I was surprised by the outcome of the first CAC I attended. I thought it was going to be all touchy, feely, silly counselling stuff because of the issues that were involved. But the counsellor in that particular case turned out to be very thorough, approachable by both parties and, yes, I was surprised by the outcome. They settled and it surprised me that it settled so quickly.”

Again, the counsellors were seen as being integral to the CAC process:

“All of the counsellors I have had, have been quite excellent in speaking to the client understanding them. And the clients have been quite comfortable and spilling it all out. So I think the quality of the counsellors is important to the process.”

Some of the lawyers commented on both counsellors and registrars whom they felt had not been as supportive of the CAC as might be anticipated. Indeed, one lawyer reported that he had experienced a registrar who had *“refused to participate”* while another recalled that a counsellor had been *“weak”*, commenting *“I thought we could have settled it, but that was the only time I was ever disappointed”*.

There was some acknowledgement that *“lawyers get in the way sometimes”* and that *“the formality of letters is not a good way to negotiate”*. Thus the CAC was seen as an avenue to try different approaches in an endeavour to reach some agreement in a controlled environment where there was the option of taking a break to discuss progress with a client.

When asked what they thought the counsellor was aiming to achieve in the CAC, most of the lawyers’ initial response was *“to achieve some form of settlement”* or to, *“actually resolve things rather than just progress them towards resolution”*. On reflection, the lawyers expanded on their first thoughts, commenting that they thought the counsellors were trying to:

“Get an agreement that is safe and okay for the kids, taking into account any of the risks have been attended to.”

“Assist the parties to resolve children’s issues or at least to try things and have a better understanding. To encourage discussion and perhaps more realistic expectations between the parties, and remind them of the importance of the children outside of the issues between the parents in a way I think perhaps a lawyer often can’t do.”

“Tease out the issues that the client has, really getting behind the order and looking at the purpose for a particular order.”

There was some concern at the time limits imposed on CACs and the possibility that this may inhibit clients from talking freely. One lawyer referred to the Columbus Pilot practice of the counsellor having a session with each party before the conference:

“A very useful feature of the Columbus conference was, that before the Columbus conference, the counsellor had a bit of an intake type session with each party and, even though there was a bit of a time limit, you don’t get the impression that it was as a strict time limit as a CAC, and I feel that’s quite useful. So, some sort of intake before the CAC where people can have. If they need an hour they can sit down for an hour with a counsellor and build up some rapport and give them time to really talk about some of their issues.”

The lawyer then expanded his idea:

“Then, perhaps the counsellor might be able to ring the lawyer and say ‘Look, I’ve seen your client, and these are some of the issues that have come out and these appear to be the areas that we need to be targeting or focusing our attention on’. I just feel that an intake interview could be a very useful tool in terms of then being able to identify and isolate issues, and ultimately reach an agreement on those issues.”

When asked what they considered made a good counsellor in the CAC process, the lawyers all noted the need for empathy, engagement, interest, and genuine concern as well as the ability to encourage clients to express themselves in a safe environment. In this regard, most of the lawyers reported that their experiences had generally been very positive although some lawyers cited incidents where a counsellor had “*waffled around the issue*” and given the impression that “*they don’t like direct confrontation*” to the point where “*it is a complete waste of time being there if that particular counsellor has got anything to do with the CAC*”. On the other hand, another lawyer commented “*I can’t remember a case where the counsellor hasn’t contributed something worthwhile in terms of the children’s issues*”.

There was general consensus that the counsellor needed to be quite strong and had to manage the CAC process.

In terms of attributes that they thought made a good counsellor, the following comment summarises the lawyers’ views:

“We ought not underestimate the advantage that the counsellor has in being part of the court process. It gives them an air of authority, people see them as part of the family court, so this person knows what he or she is doing. I think it provides the ideal opportunity for the counsellor to provide some of that information and help sculpt or guide some of the thinking why parents have particular issues or concerns. If that can be done a really early stage, well quite often that can alleviate a whole range of problems down the track.”

One of the lawyers observed that counsellors need to be aware of the type of clients they are working with in terms of:

“Talking in more sophisticated, psychological [language]. It was a complicated abuse type case and therapeutic intervention, which I think these people didn’t really understand, and it might have been easy if he had explained it in a more simple way.”

A number of the lawyers raised a general concern for counsellor ‘burn out’ by “*having to listen to the same moaning again and again*”.

5.7 Relationships with the registrars

Most of the lawyers considered that the registrars were seeking to make “*real progress towards settlement of the case*” and if they could not “*achieve a settlement, then at least narrow issues*” and then “*to provide directions as to how the case would be managed*”. Some of the lawyers reported that some of the registrars also tried to provide some sort of perspective, and to give the parents a more realistic expectation of possible outcomes. These lawyers considered that such intervention was very powerful and very helpful.

The lawyers were unanimous in agreeing that, notwithstanding the acknowledged time constraints, it was essential for the registrars to be well prepared before the CAC and not to just rely on the counsellor’s briefing. As one lawyer commented:

“I think the worst thing is a registrar who either hasn’t properly prepared or who doesn’t want to actively participate, who basically just wants to process [re-list] the matter.”

About half of the lawyers who provided feedback cited instances where it was obvious to the clients that the registrar had not prepared adequately:

“Little things like getting the names of the children right, getting the ages of the children right. These little things that can instantly alienate or create rapport, but I’ve had CACs where the registrar used the wrong name. To not have read the material, is actually quite insulting to the people who go there and take the time to prepare it.”

The best registrars were seen as those who were prepared to “*get down and dirty*” and to engage with the parents, to “*try to identify the real issues*” and who were then prepared to “*think outside the box a little bit*”, rather than give the impression that CAC was just another administrative process to be dispensed with as quickly as possible.

The lawyers reported some instances where a registrar had made little attempt to assist the parties or to facilitate progress, but rather made comments like “*you can either agree or go to court*” or “*you’ve already had 20 minutes with the counsellor each and you haven’t been able to resolve it, so I’ll just program it further [re-list the matter]*”. The lawyers felt that the registrars needed to play a more positive role rather than merely re-listing the matter (often to a different judicial officer). Notwithstanding these comments, the lawyers were generally very supportive of the registrars, stating “*we’ve actually got a very good bunch of registrars at the moment*”.

When asked what they thought that registrars could do to improve CAC outcomes, the first response from almost all of the lawyers was that the registrars had to require compliance, to reinforce the fact that compliance is an important process that imposes certain obligations especially on the legal profession, and to impose some sanctions on parties who do not comply. However, some of the lawyers also acknowledged that, in some cases, “*insisting that people have to file an affidavit and have to file a response might just cause to broaden the dispute rather than narrow it*”. An alternative view was that compliance adds to the client’s costs and perhaps some thought needs to be given to “*what documents we really want people to file*”.

There were some comments suggesting that the registrars needed to be more pro-active and;

“Insist on people participating in the CAC in a way that’s going to help it achieve what it’s supposed to achieve and be prepared to be strong with the lawyers if they’re not”.

In such instances, the ‘reality check’ by an authority figure of the ways that a case might proceed and what potential outcomes could be was again seen as being most helpful to clients.

Consistency of approach between registrars was also seen as highly desirable although this was acknowledged as being difficult as no two cases were ever the same.

5.8 The family law reform agenda

Only one of the lawyers understood the term ‘therapeutic jurisprudence’ notwithstanding that this theoretical construct underpins much of the proposed reform of family court processes.

The lawyers were all well aware of the forthcoming changes, agreeing that family law should become much less adversarial and more “*resolution driven*”. Some saw this as merely a change of image or change in emphasis, with one of the lawyers observing:

“People who want to fight will fight. If you don’t give them a chance to fight in court, they will go outside and get sticks and hit each other. So there will always be people like that.”

When asked to consider how the changes might impact on legal training, the lawyers raised, and endorsed, the idea that all law students interested in practicing family law should have both mediation and humanities units as part of their course.

Finally, in terms of improving the CAC process, this small sample of lawyers foreshadowed many of the features that have been included in the Child Related Proceedings model that was introduced in July 2006. Suggestions included:

- intake interviews with the counsellor for about an hour and a half to identify issues;
- involve the registrars earlier in the process;
- allow adequate time for the counsellors and registrars to prepare for the case, and encourage them to provide clear views on how a case might proceed if the parties cannot agree and possible outcomes;

- expedite processes so that family reports by a counsellor are available much earlier in the process, and ‘interim arrangements’ are a short-term as possible; and
- tightly manage cases rather than let them ‘drift’ through the system.

The following comments summarise these views:

“Feedback that I get from clients [suggests that] they’re obviously focusing on what the registrar is saying far more than they focus on what the counsellor is saying. Somebody comes in with a little sign sitting on his head and they automatically go, ‘oh well, maybe this guy knows what he’s talking about’ and they listen.”

“Give me a firm counsellor and a firm registrar. Let the parties know what is the likely outcome, leave the rest to us, we will get it there.”

“Give them more teeth. Make them more serious. Make the lawyers more afraid.”

And finally an observation that applies to all court staff:

“I know it’s very hard for everybody involved in the Family Court to look enthused day in and day out. But, really, the value of looking and being enthused about people from the people in positions of power just can’t be underestimated, I don’t think – even if it has to be pretend.”

Chapter 6

Professional Stakeholder Feedback: Agency Staff

Representatives of the collaborative partner agencies (Child Support Agency (CSA), Anglicare(WA), Relationships Australia (RA), and Centrecare) as well as Legal Aid Commission of WA (LAWA) participated in two focus groups to provide differing perspectives on the impact that CAC had on their agencies. The thirteen focus group participants were program managers in their various agencies responsible for such things as individual counselling services, mediation, education and support services for parents and children. Both Anglicare(WA) and RA provide supervised contact services, and staff from these two specific programs also participated in the focus groups. All partner agencies are members of the Family Law Pathways network, and so were able to provide some insight as to the ways that changing processes within FCWA might impact on both government and non-government agencies and service providers in the family law sector.

6.1 Knowledge of the CAC Process

Each focus group commenced with an open general question which asked participants to comment on their knowledge of the CAC process and the implications for their agencies in terms of service provision and demand.

Apart from the LAWA representative, the majority of participants had little or no understanding about CAC, so were unable to provide any indication concerning the impact that the changed court process had on demand for their various services. One agency representative reported that they had been involved in the construction of the CAC process.

The LAWA representative reported that from its perspective, clients feel the process is helpful, it has streamlined the court process, and helped people get to some sort of settlement much earlier.

In considering the ingredients of CAC, the focus groups generated considerable discussion about client knowledge and understanding of court process, and the role of the agencies in the court process. The agency personnel agreed that clients coming from the court do not distinguish between different court events other than knowing something about trials. The agencies reported that clients focus on the outcomes (Court Orders) rather than the processes.

For example, the Supervised Contact Services staff reported that:

“We just get the reaction to the end product. How they happen to reach that is not all that discussed”.

This view was echoed by a CSA staff representative:

“With us, it is mostly, I would think, people that have a change of assessment process that have gone through court. That is about the amount [of child support] that is being paid.”

This observation led the participants to have a discussion about their role in the court processes in general, and to reflect upon their agency’s position within the system. This discussion raised the issue of agency staff requiring detailed understanding of the various court events and the implications of these processes in terms of the time that should be allowed, the preparation required for each type of event, and the potential outcomes in both legal and practical terms. Without such detailed understanding, the agency representatives felt that they are unable to tailor services to facilitate clients’ interaction with the system both prior to, and following, specific court events.

“We don’t know where they [the clients] are in the process, and they don’t know where we fit in – they just think that, if they have been sent to us, then we must be part of the court too.” (Agency staff)

“Their confusion about how we fit in is evident. They think that we are part of the court, they think that we are there to be able to carry out to the letter exactly what is set in their Order. We then deal with their frustration that sometimes we can't do that.” (CSA Representative)

The exception was LAWA (who provide legal practitioners to represent parties in the Family Court). The LAWA representative reported that the key ingredients that have made CAC work are the direct involvement of the parties in the discussion to identify issues (rather than speaking through their lawyers in court). From the LAWA perspective, the CAC begins the process of negotiation.

6.2 Working with the Family Court

This discussion highlighted the general lack of systemic knowledge by the agency personnel and lack of knowledge of the clients about the role of the particular agency. However, the themes that emerged were the importance of the agencies as part of a team, with the authority of the court as a means to drive the therapeutic process. The agency staff also highlighted that it was important for the court to understand the role and function of the agencies, the services that they provide, and to liaise closely with them:

“We need close collaboration, and we need to keep the court updated with our program and waiting times and what we can offer. That's a key thing. If people are told to go and do a program and then there is no availability, then their frustration goes up three notches immediately.” (Agency staff)

“The clients at the CAC do need the full picture of what they will receive, and how care and contact will impact on that. If it is not possible to have the counsellors have a level of knowledge, then I would suggest that we can be called and be involved as an advisory service, so questions can be asked and advised upon.” (CSA Representative)

This led to a discussion about the practicalities of implementing such a strategy. Suggestions included teleconferencing, having staff on site (such as the LAWA office), and agency hotlines, so that there could be an immediate response.

The discussion then moved to the new legislation for family law, child support, and income maintenance, and the need for early intervention. The participants reiterated the need for closer liaison between the agencies and the court, and between the agencies themselves.

“We could share information and tailor our services, that would facilitate and speed up the process. And then it ties up the formality and authority of the court with what we are doing.” (Supervised Contact Service)

6.3 Suggestions for CAC design

Agency personnel agreed that it was important to link into both legal and social science backgrounds in trying to develop an holistic integrated approach to managing clients in the family law system. The ideal that was mooted was the concept of a 'one-stop-shop', but participants accepted that this was unlikely to be a practical option.

The participants then discussed concepts such as individualised case management within a family group conferencing framework that includes all stakeholders, including service providers. The participants noted that it may be hoping too much for settlement at CAC. However, the CAC process could be seen as preparing clients for more rational negotiation at a follow-up (Conciliation) conference, by which time the parties would have had an opportunity to reflect on the various options. This was characterised as ‘Conference Phase 1’ and ‘Conference Phase 2’.

The participants were very conscious about the increased amount of time and resource allocation that such a model would require. They noted that this process would have to be highly personalised and ‘issue driven’ e.g. identification and management of issues such as child protection allegations, domestic violence, substance abuse and mental health within an over-arching legal framework – the ‘therapeutic use of [the Court’s] authority’. The agencies reiterated that they could have a significant role in this expanded conferencing process, but that the Family Court is still the formalising authority.

6.4 Looking ahead

All participants were conscious that the focus groups were being held in the shadow of major reforms in the family law sector. As such, they speculated on how their roles might evolve in the new sector.

The agency personnel suggested issues such as standardized intake and screening procedures, the importance of assisting parents to negotiate workable parenting plans that took cognizance of the developmental needs of the children, and that many separated parents are likely to look to the family law system for support and guidance over many years.

The consensus was that the new family law system needs to have sufficient flexibility to be able to accommodate and involve the wider family networks (grandparents and kinship networks) as well as new partners and children in stepfamilies. Although they recognized that involving these additional stakeholders would certainly complicate the negotiation process, the participants' experience with family group conferencing suggests that this approach would lead to more stable longer-term outcomes for both the parents and their children.

Both focus groups concluded with the participants noting the requirement for ongoing evaluation of services and continuous quality assurance feed-back loops.

The following epitomizes the focus group discussions:

“This [CAC] all seems the wrong way around to me. We should have been included in the process from the beginning, and asked how we could help. To better link in and work more collaboratively. I mean, they [the court] need more to understand how we can work together.” (Agency staff)

6.5 Conclusions: Agency Staff

From these focus groups, it becomes generally clear that program managers and staff in both government and non-government agencies and services have a minimal understanding of the processes and implications of the family law system that they are supposedly assisting their clients to negotiate. Initial responses to questions about the nature of CAC revealed that, with the exception of experienced (legal) practitioners, there was not only lack of knowledge about this particular court process but also about the mechanics of the entire family law system. This lack of systemic knowledge means that agencies are attempting to develop programs and provide services that, in some cases, may be based on misconceptions of need and demand as agencies in the family law sector are virtually all operating in isolation from the court, and, to a large extent, from each other.

The focus group participants concluded that there is a need for agency staff to have detailed knowledge and understanding of the family law system including:

- Family Court terminology, documentation, processes, and outcomes;
- the significance of Minutes of Consent;
- specific Family Court orders (such as Recovery or Discovery Orders);
- Orders from other jurisdictions (such as Restraining Orders);
- the implications of these various Orders for interactions between the parents, kinship networks, and with external agencies (such as schools or medical practitioners); and
- the interfaces between government departments and services (such as CSA, Centrelink, ATO, DCD, and the police).

This highlights the need for an extensive and continuous training program for agency staff (almost to the same level as court counsellors in terms of understanding the family law system. By the same token, this identifies the need for court counsellors to have similar level of knowledge about the service agencies.

Although the agencies work within a similar framework and confront the same issues, they rarely engage in collaborative practice. It is suspected that this is a reflection of the competitive tendering process required by government to fund these services. This highlights the need for some form of sector management that facilitates coordinated research, knowledge sharing, program development, service delivery, and evaluation.

In general, the sector has the perception that the Family Court has the authority, the capacity, and the ability to coordinate both policy development and service integration within the family law sector. This misconception of the role of the Family Court needs to be addressed but seems to have been overlooked in the family law reform process and attempts to redefine the role of the Court. The absence of such a meta-framework may impede efforts to reform the family law system.

There is an identified need to develop an interactive referral system to pass clients to various services within the overall family law system. Such a system could be internet-based and replicate existing models (such the Volunteering Network that allows suitable volunteers to be matched to advertised vacancies as they arise).

There is an identified role for parenting coordinators to assist with ongoing case management. The agencies appear to be willing to develop and implement this strategy that government family law reform policy documents identify as 'parenting advisors'.

Chapter 7

Client Stakeholder Feedback: Mothers

“The first time I came to court, that was horrible but the second thing, that CAC, that was great. That worked a lot better.”

Notwithstanding that only ten mothers agreed to a formal interview about their experiences of the CAC, the following analysis is consistent with informal feedback that the evaluators have obtained in discussions with a range of parents over the past two years.

7.1 The Court Process

The ten mothers had quite different recollections of the way that the court process had been initiated. In three cases, the mothers had lodged the application themselves whereas in five cases, the father had initiated proceedings, while the other two women could not remember how the litigation had started. Most of the mothers recalled getting a letter from the Court, although three of them reported the letter did not make the process very clear. The women confirmed that the first court event (CAC) had happened quite quickly, “*within a couple of weeks*”. However, one mother reported that, because there had been a failed attempt at mediation, and the father worked away, it had taken about four months to get a CAC.

All of the mothers reported that each of their disputes centred on contact and/or residency and the need to “*get something in writing*”. As one of the mothers explained:

“He doesn’t pay maintenance, doesn’t buy them anything, or do anything else for them. So [I wanted the Court] to put it in writing that he has a responsibility to them, they’re his children. I thought that he would stick to that, but he didn’t stick to it anyway”.

None of these women knew what the aim of the CAC was other than having a vague idea that it might help to “*get it sorted out easily*”. Two of these mothers reported being satisfied with both the process and the outcomes of their CAC:

“I was quite happy with that first initial conference of what came out it and how they approached it. It went better than I expected, actually.”

“You know, it wasn’t what I wanted, it wasn’t what their Dad wanted. In the end it was what was best for the kids.”

Although those mothers who were represented agreed that their lawyer had tried to explain the process none of these women knew what they were supposed to do or what was expected of them in the CAC:

“It was probably more nerve-wracking. Because you’re sitting out there and you’ve got an idea that you’re going to have a chat with the counsellor first, and then somewhere along the line you’re going to see the registrar. But it’s not clearly explained.”

One of the mothers suggested that the information session could be revised, so that it was more relevant to the actual process:

“It doesn’t break it down as clearly as to the whole [process]. The bit about the conference and how there’s so many steps. I mean, it’s written down, but to actually to go through and experience that before you actually get to the court. A video or film would be useful.”

The women who were represented thought that their lawyer would “*not so much speak for me, maybe guide me*” and help to “*bring out the issues I had problems with, making sure they were heard*”. One woman recalled that her lawyer had explained a proposed settlement in terms of:

“He just told me ‘This is the norm, every second weekend and part of the school holidays.’ And that’s what we went with.”

The woman who had previous experience of the court process was quite clear in her view that:

“I think everyone needs a solicitor. That was my problem the first time. I was unprepared, and you need to know what you sign.”

7.2 The CAC Personnel

Although these ten women had had their CAC less than three months before the interview, half of them had no idea which of the two court staff was the counsellor and which was the registrar. One of the women recalled feeling quite intimidated, as both the counsellor and the registrar were men. However, there was general agreement that the counsellors were there to mediate, and that “*they were nice people, easy to talk to, and they listened*”.

In terms of the conduct of the first part of the CAC, the women reported being confused at what the counsellor was trying to achieve. Some thought that the counsellor would be trying to “*get an idea of how the children felt*” or make some assessment of the “*dynamics in the two different areas, and what went on in one household and what was in the other*”. One mother reported being quite surprised when the topic of her partner’s new life was raised and got the impression that “*they felt sorry for him, and I wasn’t there for him to be felt sorry for*”.

The registrars were either seen as being peripheral “*they only come in to sign the forms*”, or to put pressure on people to reach agreement:

“Like if you don’t do this, it’s never going to end, so you’ve got to sign, so do it now, get it over and done with and see you later”.

Two of the women reported that the registrar seemed to take little interest in proceedings “*just looking away at something while I was talking*”, and one mother in particular was surprised to be challenged about allegations of violence:

“It was like are you trying to pull this as a trick, this restraining order business is not going to work for me”.

However, the other seven women were much more positive in their reflections on the role of the registrar:

“Even though she was the decision-maker, she was also a negotiator. She was very stern, very thorough, she didn’t drag other issues in, she would let you have your little bitch, but she was very diplomatic. She was brilliant, brilliant, very straightforward.”

“She was fair. She didn’t just see my point of view, she saw his point of view, but she didn’t drag it to the point that we were going to sit there and argue all day long.”

“He made the orders and did the decisions and sort of summed it all up, which was good.”

When asked if they thought that the counsellors could do things differently, most of the women felt that, although they did not know what to expect, there was little room for improvement from their perspective:

“He did a great job. He listened to both sides. I could tell that he was impartial. He was good. I don't have any complaints or suggestions about how it could have been improved.”

“They were brilliant. I was blown away. It was amazing, they were really excellent. Not forceful or pressuring, just excellent.”

One of the women commented on how calm the CAC process had been while another mother’s only observation was, “*to me it was a wonderful process really to sort out a situation*”.

However, there was general consensus that, although some clients might be well prepared, the court must realise that most people do not know what they’re doing or what to expect. As one mother said:

“I went into panic mode. I was hysterical, upset thinking how is he doing this to me? Am I going to lose my kids? Is he going to drag this up and drag that up? He was still hurting that we broke up. He still wanted to come back.”

7.3 The CAC Rationale

The mothers all appreciated that the CAC was an opportunity to negotiate. Although some saw the process as a chance to emphasise the fathers' obligations to their children or voice concerns over welfare matters, most saw it as a way to avoid litigation. The women had mixed thoughts on the timing of the CAC:

“The sooner the better I think.”

“It worked well for us, but we needed it right at the beginning. They knew their stuff.”

“In some ways, yes and, in some ways, no. I think it depends on the situation and the children and the concerns.”

Notwithstanding that some of the women reported that they found their lawyers had been a great source of support, there was some concern that the lawyers should not be at the first conference for, as one mother observed, in some cases *“the lawyers’ influence is what damages that process”*.

Not surprisingly, the women reported a range of views on how encouraging the registrar was in promoting discussion, negotiation, or compromise to achieve some sort of outcome. The following comments epitomise these views:

“The registrar gave us the most opportunity in the end. He laid it on the line, diplomatically and tactfully.”

“The registrar had a sternness and professionalism. Plus the word ‘registrar’, is like, that is the top level now. A counsellor, I see as someone who just counsels but the registrar, you fear a little bit.”

“I remember that the registrar, said ‘Look, if we don’t get this settled, then this is the consequences and the chances of this will be, blah blah’. I think that people get a real chance to see that how things might go and, then it seems real to them.”

The mothers generally felt that the time allocated to the CAC was adequate and provided sufficient time to negotiate if progress was possible. Although some of the mothers preferred the mediation approach, most of them considered that, in their case, the underlying authority and formality of the court was necessary to advance negotiations or achieve at least some outcome:

“I think, for a great majority, it is best in the court. If people are responsible Then, yes, counsellors, but in the court, you know you have protection.”

“Sometimes I think the legal side of it pushes things into a clearer picture that mediation isn’t quite enough, you might be able to say it there. But [in court] you’re really in a structured environment.”

7.4 The mothers' thoughts on the CAC process

Although all of these women reported feeling overwhelmed and intimidated at the thought of going to court, they clearly recalled the initial process of the CAC and the separate interviews that were conducted with each of the parents. There was almost no appreciation that these interviews included the counsellor making a formal risk assessment, except where a mother was able to produce a VRO⁵.

For some of the mothers, 'risk' included their lack of control of lifestyle aspects or general welfare (such as the children not being fed properly, different bedtime and hygiene routines, or sleeping arrangements) while the children were visiting their fathers. The women who said that they raised these types of issues in the CAC reported that they felt as if their concerns were minimised.

All of these women reported that the main hurdles for them were the inability to communicate with their former partner and the raw emotions that they, and the fathers, felt if they tried to talk about the children. There was general acceptance that residual anger and a desire for retribution (i.e. adult issues) often subsumed the wellbeing and care of the children. Many of the mothers felt that there was little emotional support available for them, or more especially for their former partner, in the court process and increased support might have defused some of the anger and obstructiveness of both parents.

One mother also suggested that some fathers need to be reminded of their obligations:

“There is lack of information to the man to let him know that he has to have [contact with] the children and that he can't just walk away.”

A number of the mothers raised the issue of follow-up by the court to check if the parents were complying with the orders. However, as one mother commented:

“Ultimately, the court needs to get parents to grow up. If there was something in there to help the parents grow up, then that would work too. Parents need to know that it's not about them. That's lacking, it's tiptoed around that these parents behave like 2-year-olds, because is it politically incorrect not to say that.”

The mothers generally thought that the counsellors did a good job and explained the CAC process well.

“Yes, there was pressure for resolution but not to just agree with something for the sake of resolution. A lot more was done to make sure we understood this time - everything was explained. It didn't feel like there were any hidden agendas.”

The mothers reported that, although they all felt that their concerns were heard and that they had faith in the counsellor, some recalled that at times the counsellor used language and terms that they often did not understand:

⁵ VRO: Violence Restraining Order

“They also speak a little over-educated at times, and it’s not aimed at us all the time. It’s like, ‘is this what you are telling us?’ And they’re like, ‘yeah’. It makes you feel pretty dumb, and sometimes you just guess at what they are meaning.”

When asked whom they thought was in charge of the conference, the women appreciated that, although the counsellor did most of the work, once the registrar arrived, they were the authority. In terms of ‘power’, the women saw this as shared between the counsellor and the registrar, depending on what was being discussed. As one mother noted:

“The counsellors have the power to influence. But then the man [registrar] had the final say. But the counsellors definitely influence.”

Some of the mothers had previous experiences of court processes and made the following comparisons:

“The one I did before was horrible, so, yeah, it was a brilliant change.”

“CAC lets people know that you are in a shit-fight [sic] if you end up in court. They are trying to soften the blow. It lets you know, so you don’t end up there. It’s like they are giving you the opportunity not to go there.”

However, there was some recognition that at times the formal court process is necessary:

“We needed to go to court. There is something about the court that makes people sit up and realise that this is serious. It’s that authority.”

The women had the following general suggestions on improving the CAC:

- maybe have two individual (different gender) counsellors;
- separate interviews are a must to start with, and then joint later; and
- an outline of the conference aims, process and possible outcomes beforehand so that people can be organized and have things prepared.

A number of the mothers reported that they found waiting in the main court area was not conducive to negotiation, as they could hear other clients arguing or crying. The suggestion was that CACs could be “*on a different floor, so we don’t sit there and listen to these people behind us bitching about everything*”.

Most of the mothers reported that, although they found the situation intimidating, they also felt comfortable and appreciated that “*the people that work at the court, I feel that they are committed to helping us do that and to not think of our issues*”.

Two comments conclude this section on the CAC process:

“At our age, we see it in our friends and we know how it can get. With this you see there is a simple way.”

“When you hear ‘family court’ you instantly think judges, police, security guards, and fighting because those are the things that you see. The screaming and tears. But it was like ‘come on in’. It was totally different for us.”

7.5 CAC Outcomes

Most of the ten mothers reported that they achieved some form of agreement at the CAC. For some mothers, there was no change to existing orders while, for others, there was full agreement about the issues in dispute:

“There was full agreement, yes, full agreement from my ex-husband. That was so good to get it all done right on the day. I was so thankful.”

For others, there was a partial agreement and the opportunity to review the outcome:

“There was partial agreement, because they said ‘to be reviewed in 6 months because these parenting arrangements that we have here are not necessarily the full [final] agreement’. It’s like we can go back and talk about it again at some stage.”

And even when there was some pressure to agree, one mother reported that the long term outcome had been successful:

“Well, it was brilliant. I got a bit frightened when they got a piece of paper and wrote the orders out by hand right there. She said ‘Look, if you go away and think, you probably won’t sign everything again. We need to do it now’. She knew what she was doing. It’s been working now, and that was a year ago.”

Eight of these mothers reported that they were satisfied with the fairness of the outcome of the CAC. One mother described the outcome:

“I can’t speak for him, but I was happy. He was too, I am sure, we walked out happy. It was difficult moving out of the house, but it worked in the end.”

When asked if they thought that their former partners were satisfied with the outcome, the women offered comments such as, “*well he has stuck to it hasn’t he*” and, “*stuff that worried him before now isn’t an issue*”.

The women agreed that there had been some obstacles during the CAC process, but that these were generally:

“... dealt with smoothly and professionally, yes, and they did a great job. I give them credit. The reality was that it could have blown up and he could have stormed out, but it didn’t happen that way. That was to the court’s credit.”

“It was just an obstacle that we couldn’t all communicate enough and had to be there. I think that we all learned things through this how to communicate now and not need the court. I am more comfortable with that now.”

In considering what more might have been done in the CAC, the women offered the following suggestions:

- the potential for follow-up appointments to monitor or review the arrangements,
- the lack of involvement or input from new partners,
- the absence of sanctions for those (fathers) who do not abide by the orders,
- someone to ring and report when a parent fails to comply with orders, and
- the realisation (although not necessarily an acceptance) that they could not control what was happening when the children were with their fathers.

In terms of the outcomes, there was considerable confusion about the orders and how long they apply. Many mothers thought that ‘final orders’ could not be changed while others thought that the matter could not be brought back to court for 12 months. There was considerable concern over involving children. One mother thought that:

“Twelve years olds have the right to say who they want to live with. I think that is too young. Twelve year olds are quite immature, and no way would I would let mine decide at that age to live with her dad.”

One mother was quite anxious that her lawyer had told her that:

“When they are old enough to make that sort of decision, then even the order won’t stop them anyway.”

All of these mothers reported that their children seemed happy with the outcomes that eventuated. The following comment epitomises these views:

“Yes, I know she feels safe now. And she is having a good relationship with her dad. She is happy. She knows that she doesn’t have to go - she goes because she wants to go, and her dad knows that. It’s more positive now, and he knows that change will happen as she gets older.”

The mothers reported that, generally, their former partners seemed to accept the outcomes. Some of the others were concerned about the influence that a new partner (stepmother) might be having on the children – although none acknowledged that their new partners (stepfathers) might be seen in the same way from the other parent’s perspective.

When asked to consider approaches they might take to re-negotiating their parenting arrangements there were two schools of thought. Some of the mothers saw the authority of the court as the only avenue for change while others had realised that they had to find a way to manage these issues themselves. One mother reported that:

“We have even all gone out for dinner on occasion. If we need to, we change things for what will work, that is important.”

In summary, most of these mothers were generally happy with the CAC process and the outcome that eventuated.

7.6 Improving the family law system

The mothers had a number of observations that they thought might improve the family law system generally:

- “You should have Centrelink, Child Support Agency, and courts running hand in hand because then it might be done with the kids in mind.”
- “I reckon that something should be there for people as soon as they separate rather than wait for an incident to happen.”
- “As soon as you register with Centrelink and with Child Support or whatever, then you register with the court.”
- “Get them in quick, and do the CAC with the counsellor and sort out the process. It will stop the hostility down the track. Then everyone will win, and there won’t be tears and fighting.”
- “Be a bit more assertive on following up.” [the outcomes of the CAC and whether the Orders are being respected].
- “Repartnering [including new partners]: while she doesn’t have a new boyfriend and he doesn’t have a partner, it’s okay. But when she gets a new partner, it gets shitty. Then it becomes them taking each other to court, and they don’t think about the kids.”

The following comments complete the feedback from the mothers and reflect varying thoughts on the CAC process and the impact that it had on them and their relationships with their former partner:

“We had to wait it out, and get it to this point. We all had to work things slowly and accept the process and wait for it all to happen, and not push things.”

“It went well and I was happy with the outcome, and I don’t think that I would change anything about it.”

“I went in knowing where I could compromise. I wanted us to both win. He would save face that way. I wanted to stop all that pretending and play of power, and I thought that we could have dignity if we both win. That worked for us, and it worked for our child. We had to grow up.”

There was also a general recognition of the work that the Court personnel do:

“It was a huge victory. It did really work. I am sure that they [the Court] don’t get acknowledged for much for the work that they do, but I have to say that it was great. I mean, people still complain even when it goes their way. I feel for them, the people there work with society at its worst.”

Chapter 8

Client Stakeholder Feedback: Fathers

Eleven fathers agreed to a formal interview about their experiences of the CAC and, like the mothers, almost no new issues or themes emerged after about eight interviews. Within a qualitative methodology, this high degree of consistency is termed ‘saturation’ and suggests that, even with a small number of participants, there is a high level of reliability in the results. The issues and themes will be cross-referred to the corresponding sections of the mothers’ views throughout the discussion in this chapter. As with the mothers, the themes and issues are consistent with informal feedback that the evaluators have obtained in discussions with a range of parents over the past years. Only one of the fathers was the former partner of one of the female participants. Six of these eleven fathers had previous experience of the Family Court, and so were able to make comparisons between their previous litigation experience and the CAC process.

8.1 The Court Process

As with the mothers, these eleven fathers had different recollections of how the court process had been initiated, although most of them had filed the initial application.

“She was feral and I didn’t like the way my kids were being treated. So I took her to court and we just ended up in the courtroom.”

Some men recalled that their lawyer had advised them of the CAC while others remembered “*getting a letter from the court*”. Again, like the mothers, some of the fathers reported that the letter did not make the process very clear:

“They’re, like, in different language. If you’ve never been through it before, you don’t understand what’s going on.”

The men also confirmed that the first court event (CAC) had generally happened quite quickly, “*turn around times were good – about three weeks*”.

The fathers reported that each of their disputes centred on contact and/or residency. In two cases, the fathers were the resident parent and the mother had failed to return the child so the father had initiated recovery proceedings. Unlike the mothers, many of these fathers also reported that they had taken action because they were concerned about lifestyle and parenting issues as well as the presence of new partners (stepfathers) in their children’s lives. The following comment was typical:

“I didn’t like the way that she is treating me, and I didn’t like the way she was treating my children. She was outright unreasonable, verbal abuse. The psychological abuse that my children have suffered is beyond bloody belief, and something should have been done about it.”

Although some of the men said that their lawyer had briefed them on the CAC process, most still only had a vague idea of what it entailed other than that it might be to “*try and sort stuff out before it actually goes to the family court*” or “*to keep the stuff out of Family Court*”. Few of these fathers saw CAC as an opportunity to negotiate. Rather the two main themes that emerged were that somehow the court would force the mother to cooperate and “*make it compulsory she had to talk and tell her that she couldn’t conduct herself in the manner she was*” or “*jumping through a hoop*” that would eventually lead to them being vindicated in some way:

“That the court would rule in my favour. Look, my judgement was more sound than my ex’s, so I thought that they would make a judgement call.”

Almost all of the men went to the CAC expecting some sort of decision, although few of them acknowledged that they too were part of the decision-making process:

“What I expected was the court to adjudicate because we’re too diametrically opposed. I’m not saying I’m right, but someone really has to take charge and say ‘hey, guys’. But that didn’t happen.”

Again as with the mothers, the fathers suggested that the information session together with the written information that is provided should be revised so that the overall court processes are clearer:

“Everything in the Family Law Courts is too hard to understand for a simple person like me. When it comes to paper work, it’s a minefield.”

The eight men who had legal representation generally reported two approaches by their lawyers:

“I was guided by the lawyer to try and come to an amicable arrangement, and resolve things between the two parties, so there’s no animosity.”

“The lawyer just said, ‘Look, you have to go to it, we know it’s not going to work, because we’ve been through this before – and no matter what I say, the other person is opposed’. She was just messing around.”

One father thought that the lawyers could undermine the negotiation process:

“I found it just became another protracted argument between two lawyers arguing over semantics whereas the real guts of it seemed to be missed, the children. The second time I didn’t take a lawyer with me at all, and we got it sorted.”

Other fathers reported that they used their lawyer primarily “*as a safety valve*” or to “*clarify legal jargon*”.

However, one father reported that his lawyer was very supportive in keeping him focussed on the real task:

“He was a good, because he actually said to me when he first met, ‘What do you want me to do, win the case or do what’s best for your son?’ I replied, ‘Do what’s best for my son, even if it means going against me’. That’s what it’s about, because they’re unemotional, and that’s what I’m paying for, I guess.”

8.2 The CAC Personnel

The length of time between the fathers’ CAC and the interview ranged from a few months to over a year. Many of the men had a number of unresolved issues, and tended to provide very detailed (and seemingly irrelevant) background stories to support their views and experiences of both the CAC personnel and the process.

As with the women, most of the men were quite confused over which of the two court staff in the CAC was the counsellor and which was the registrar. Some of the men also recalled feeling quite intimidated or “*ganged up on*”, as both the counsellor and the registrar were women. These feelings were even more pronounced if the mother had a female lawyer and the father was unrepresented. In these situations, the men tended to be very suspicious and interpret suggestions as being potentially biased. Notwithstanding this observation, there was general agreement that the counsellors were there to mediate, “*to be balanced*”, and to “*help people come to some sort of agreement*”.

In terms of the conduct of the first part of the CAC, the men also reported being confused at what the counsellor was trying to achieve. Some thought the counsellor would be trying to:

“Extract information required to build up a case file, to establish a feel of the case, or to get the ball rolling. I guess, to give both parties a chance to discuss things as much as possible, and to get as far as you can without hopefully going into a court room.”

Despite a limited understanding of what the counsellor was trying to achieve, most of the men were quite positive about the experience. As one father recalled:

“I personally thought the counsellor did an exceptionally good job. I think they presented a very balanced report and, without innuendo and with recommendations, and I fully supported all of them. So I would say, yes, if that’s what their job is to do they did it. But I’m not entirely sure what their job is to do.”

The registrar was seen as the official authority figure who had the capacity to make decisions and to determine how a case might proceed. In cases where this did not happen, the men were bitterly disappointed – especially if the decision did not accord with what they thought should happen. In such cases, the fathers tended to immediately talk in terms of their rights with comments such as:

“I won’t be a party to them moving. I want to see my kids any time I want. If my child rings me up now and said, ‘Dad I want you’, I want the right to go there.”

However, most of the fathers were fairly positive about the registrars' input:

“The experience in doing this stuff showed. I wondered how they could listen and write notes – I wondered what they missed. Also they, [registrar] can cut through the ‘lawyer speak’. They are actually the controller of the lawyers more than anything. It’s not necessarily up to the registrar what’s best for the children, that’s more up to the counsellor, I would say. The registrar is merely serving justice as the decision-maker. I wouldn’t envy them the job, but it certainly cut corners.”

Although most of the fathers did not know what to expect in the CAC process, when asked if they thought that the counsellors could do things differently, the men had a range of views. Some thought that there was little room for improvement by the court personnel:

“No, the people could not have done their jobs better. They did their jobs well. The registrar was fairly warm and understanding, and he listened well and gave authority when it was due. As my first experience, the people were very good.”

Other men had varying levels of criticism. One father thought that that the process was too short to “*get a full appreciation of a situation and would have liked it to be a more ongoing process*”. Other fathers thought that the CAC was “*rushed and undignified*” with insufficient time to fully explore issues, and with minimal provision of private places for clients to consult with their lawyers. The fathers who had previous experience of the court also commented on the desirability of having a designated registrar assigned to each case. Two men also raised the issue of counsellor bias, but this appeared more to do with how the counsellor had handled their former spouse’s distress than the actual issues in dispute.

In terms of being better prepared for the CAC, the fathers echoed the mothers’ request for more information “*in plain English*”, with many reporting that they had to seek legal advice just to interpret the court forms. Many of the men commented at length about the veracity of affidavits, and that they thought the court should investigate these as part of the process – a clear misunderstanding of the role of the Family Court.

Those who had sought assistance from either the telephone call centre, or the reception desk at the Court reported that generally the staff were:

“Very very helpful, they pretty much knew what you needed”.

8.3 The CAC Rationale

Although the mothers generally appreciated that the CAC was an opportunity to negotiate, the fathers saw it more as a decision-making opportunity and often as only the first step in the court process. As one father said:

“I see the merit behind the theory, but no one is willing to make a judgement. The registrar, as I saw him, was a referee trying to locate people and a referee doesn’t locate, a referee rules.”

However, other fathers were very supportive:

“I found it was a very good idea, it certainly came along at the right time for me.”

“It worked that the authoritative person was there at the CAC.”

Many of the men tended to concentrate on what they perceived as the disadvantages of the CAC process. The following topics were raised in a significant number of the eleven interviews:

- The length of the CAC – *“it dragged on too long but with no resolution”*.
- Affidavits and the role of the court – *“there was no rule by the court to actually check out what’s in the affidavits. I think it muddies the waters more than it makes things clear. They’ve really got to research the statements”*.
- Involve both parents – *“make both parents sit in the room at the same time, and make them understand that they are there not to win against each other, they are there for the child’s interest and pound that into them”*.
- Sanction recalcitrant parties – *“stop the parents fiddling around”*.
- Restrict legal input – *“you tend to be sidetracked by lawyers clarifying issues. If it’s too hard, they will just move the goalposts on you, they will delay the proceedings further, and that’s what they work on. It’s a gold mine for them”*.

A number of the fathers suggested that having two counsellors (different genders) could help reduce the potential for perceived bias, and provide some emotional support for both parties.

One man extended this proposal suggesting that the CAC could be in two parts, the first with just the counsellor(s) and the parties, and the second with the lawyers and the magistrate.

Another suggestion, which has effectively been introduced with the concept of the Family Relationship Centre, was:

“Removing the process from the court building itself might help. Maybe, if it is a stepping stone, it doesn’t need to be in the court.”

The final comment suggests that, even if the CAC does not achieve the anticipated outcome, it is a useful process in its own right:

“If it works, it’s good. But if it doesn’t, I wouldn’t say it is a disadvantage. I would say it’s one negative outcome over probably many that do work.”

8.4 The fathers’ thoughts on the CAC process

The men did not talk about CAC in terms of being overwhelmed and intimidated, but rather as frustration at a process that did not necessarily proceed as they anticipated. Most of the men understand the concept of initial separate interviews followed by a joint discussion. When the joint discussion did not happen because *“she cried”*, *“she refused to be in the same room”*, or *“she just didn’t front up”*, they interpreted the flexibility of CAC with suspicion and a sense of bias.

One father noted that the new stepfather was not included in the CAC, and he thought that this had facilitated an agreement between the parents.

There was only limited appreciation that the separate interviews included the counsellor making a formal risk assessment. Like the mothers, 'risk' for these fathers included their lack of control of lifestyle aspects in their former partner's life (such as the mother still claiming a pension while repartnered), or general welfare (such as the children not being fed properly), and being excluded from decisions about schooling or sporting activities. These views are epitomised by one father's comment:

"I think there are bigger risks than just violence, there is mental facts [sic] as well. There is so much emotional stress."

Some of the fathers acknowledged that a risk assessment should be the main agenda of the Family Court "*to make sure that the kids get the best possible decision for their care that they can*". Another man, who recalled the risk assessment phase of the CAC, commented:

"I think they're fair - very professional, I think the lady [counsellor] was very, extremely professional. As I said, her report in the CAC was extremely balanced."

However, one father expressed the view that:

"Just about every man I've spoken to at some stage or another has been threatened with a VRO, but this is a sword, not shield. That's one of the first things they do to attack a bloke."

Virtually all of the men reported that the main hurdles for them were their inability to communicate with their former partner, and the raw emotions that they felt if they tried to talk about the children. Many of the men talked in terms of the mother manipulating the system – "*playing the card that she didn't want to be separated from her child – which by the way is also my child*", or not appreciating that the child has a right to continuing contact with their father. Others linked their child support payments to an entitlement to contact – "*I'm the paying parent, I'm just paying and no access*". For other men, the biggest hurdle was that the mother did not attend court events and, that this was interpreted as another form of bias:

"The sillier you act, the more you get away with. I feel that the more you weep, the more you get, and as a father, I have to fight more. You do not start on equal grounds."

Like the mothers, almost all of the fathers raised the issue of the absence of emotional support during the court process. The following comments epitomise these views:

"You feel that you've been raped, physically, emotionally, psychologically. You find that you don't have the support groups that women have generated with the children. There are a lot of men out there who believe they've done nothing wrong, who are sitting in single bed sitters plotting revenge. And it's a sad thing."

“Lack of emotional support, I reckon, is the killer. I reckon, that’s what everyone needs, whether it’s me or my ex-partner. Going to court knocks the crap out of you, you shouldn’t be there, it’s a horrible place to be. I reckon a concentration camp couldn’t be much worse.”

Many of the fathers also noted that “*counselling is a terrible word for men*”, but that it would be handy for men to have:

“Somebody that’s been there, done that, and says to them, ‘Look mate, I can only show you a path. I can’t tell you what to do, but I know exactly how you’re feeling’. More of a support group, there’s got to be something out there for men.”

However, one of the fathers recalled his experience:

“I didn’t know where you go for help, I must admit. A lot of these father agencies are hard to get hold of. And when you do speak to them, they’re just as lost as I was, or am.”

Almost all of the eleven men reported some residual anger at the court processes. Most of the fathers saw the court as the decision-making authority that would vindicate their views. When this did not occur as they anticipated, they became very bitter, as the following comments suggest:

“I thought it was a joke. I thought the registrar would have laughed at her and told her, ‘Get lost, grow up’, and send my son back. That didn’t happen. So, I was pretty angry”

“It was just cold. I couldn’t see any resolution happening, and I got the impression they’re so busy that they don’t understand individual cases.”

“Anger, that we agreed we were going to talk about this – and it didn’t happen because her lawyer wouldn’t let it. This was just another step and, like, ‘It’s okay we can make him wait a bit longer’.”

Unlike the mothers who generally thought that the CAC process was quite well designed, almost all of the fathers wanted a much clearer structure to the process. The following comments typify their views:

“I just think it was all totally wrong – wasn’t on time, shoddy, one person in, one person out, no rhyme or reason, just the other person wants to do it. I think it’s quite unprofessional, personally.”

“I don’t think an outline as to how the structure was going to proceed was given to anyone in terms of we’re going to start here, this is what we hope to achieve, or this is where we’re going to have a break for exactly 5 minutes for you to talk to each other. There was never a promise of any outcome. This is just another hoop, another hurdle you have to go through, but this hurdle may be a shortcut to the end.”

“To be told that she decided last minute that I couldn’t be in there. I was upset and disappointed that she could decide that, and that meant that was how things would go.”

The fathers generally agreed that their concerns were acknowledged but not necessarily addressed by either the counsellor or the registrar. Like the women, the men appreciated that, although the counsellor did most of the work, once the registrar arrived, they were the authority figure.

In terms of ‘power’, the men had some interesting views. Almost half of the fathers reported that their former partner (or her lawyer) controlled the proceedings. However, there were two very insightful comments on the power within the CAC process:

“I don’t think the counsellor or registrar had any power at all – because it’s not actually between them, it’s between us.”

“The counsellor was brilliant, her power was her compassion. The registrar’s power was obviously his position. But he seemed an intelligent man and a listening man. Each had their own power in their own way.”

Two of the men who had previous experience of the Family Court made the following comparisons:

“The CAC is more personal than the whole impersonal side of the other court parts where it’s all dirty laundry and it is demeaning. It would be good if things could get settled there in CAC, at least the personal stays more personal.”

“I know this is a snobbish response, but I was looking at other people who were in the court on that day who were, well, poorly dressed and shouting and screaming and swearing and what have you. All I could do was sit there and think, ‘why are we here? We are intelligent people and it should not have got to this point’. I was frustrated and humiliated.”

Like the mothers, most of the fathers also found just being in the court daunting and, for most of the men, this was exacerbated by not understanding what was happening or not understanding the terminology:

“The CAC could have been a very powerful thing, but at the time I didn’t really understand. I wasn’t ready. But orders can change. I didn’t know that then. I feel that it would be easier if the court told people that.”

“They talk a different language. When the registrar was talking of proceedings - they think you know it all, they do it everyday, they understand it, we don’t. And there are times when you have ask and you feel like, a bit stupid. But that’s life.”

8.5 CAC Outcomes

Most of the fathers reported that they achieved some form of agreement at the CAC, although only four of the eleven reported that they were reasonably happy with the outcome. Two fathers reported that they had “*some sort of short term agreement*” but that this was not what they had wanted and they classed this as “*a hollow victory*”. The five men who reported no real outcome suggested a range of things that they felt might have helped:

- Make it compulsory to negotiate;
- Provide more counselling (mediation) opportunities before the registrar joins the conference;
- Have someone explain the legal situation right at the outset so that people knew precisely what was expected of them; and
- “*Just a decision, any decision is better than no decision*”.

Despite not achieving what many of the men had hoped, and although the lawyers were viewed with suspicion, there was a general view that the court staff were “*pretty sensible*”:

“The magistrate and certainly all the court staff were, and certainly the court psychologist [counsellor] was professional. I can’t pick a fault with any of the people in the court.”

The fathers who reported being entirely dissatisfied with the outcome of their CAC offered three main reasons other than the actual decision that had eventuated. The first of these was the concept of ‘status quo’ in child-related disputes, the second was the rationale of ‘primary care giver’, and the third was the level of scrutiny that the some of fathers felt they were under.

The following comments illustrate these three points:

“I believe that mother had advantages in the initial stages of the process that wasn't addressed – the ‘status quo’. She had the opportunity for influence and there was less of a chance for me. They aren't going to go far from what is already happening, there would only ever be small movements.”

“I am not the primary care giver. They have all the rights. The other person has few. They get to choose everything. I am secondary, just the visitor. I borrow my son for a weekend every fortnight. But everything I do is under scrutiny.”

“I’m the one that has to jump through hoops to be able to achieve what the children want, whereas there are no hoops that she had to jump through. I had to prove that I had suitable residence. I had to prove that I have no criminal record. I have to prove that I have no violence. I had to prove that I am not taking drugs. I had to prove that I have a permanent job. I had to prove that I’ve been permanently employed. None of these things were asked of the other party.”

When asked if they thought that their former partners were satisfied with the outcome, the men offered comments such as:

“No, she feels that I shouldn't have access to the children at all. She says that it was my choice to leave, so that I shouldn't take away her time with the children.”

“No she wants it changed, not happy at all. She wants total control.”

“She's pretty happy because she won't give me any more time.”

The nine fathers who were having regular contact with their children reported that their children seemed quite relaxed at the outcome and the current arrangements. Two fathers were having no contact at all with their children and “had no idea how the kids feel”.

In terms of improving the CAC process, one suggestion was:

“It would very handy if there had been something in writing that you could put onto the table to negotiate around. I think an agenda would have been good.”

Like the mothers, a number of the fathers were concerned about the influence that a new partner (stepfather) might be having on the children – although, again like the mothers, none acknowledged that their new partners (stepmothers) might be seen in the same way from the other parent's perspective.

When asked to consider how they might approach re-negotiating their parenting arrangements, the men generally echoed the mothers' views there were two schools approaches. Some of the fathers still saw the authority of the court as the only avenue for change while other men had realised that they had to find a way to manage these issues themselves. Those men who had tried to seek assistance in managing subsequent disputes had found the experience very dissatisfying:

“It's like someone putting you in a aeroplane and sending you off, ‘tally oh old chap good luck, might not see you for dinner’.”

In summary, although most of these eleven fathers could appreciate that the court was seeking a different approach and there were some positive outcomes, they still felt disadvantaged in the system.

8.6 Improving the family law system

The fathers had a number of observations that they thought might improve the family law system generally. It is noteworthy that many of these issues and concerns have been addressed in the family law sector reforms that were introduced in July 2006.

8.6.1 Court processes

The fathers raised the following:

- CAC could be more powerful and formalised;
- CAC outcomes need to be enforced with sanctions if people do not comply;
- Unqualified people's affidavits need to be checked;
- Children should be allowed to have a say but not be placed in the position of making decisions; and
- Each case is unique – there are different circumstances for everyone. But there are average people too, and there needs to be an average solution.

8.6.2 Lawyers

Not surprisingly, there were two schools of thought:

- Keep lawyers out of it as much as you can;
- Lawyers are essential, and you should always consult one;
- Legal advice should be more readily available at a fair price; and
- Legal Aid should be available to both parties if they meet the income criteria.

8.6.3 Family Relationship Centres

Although they did not mention Family Relationship Centres (FRCs) specifically, the following issues that the men raised will be addressed by the FRCs and the expanded Family and Relationship Services (FRSP) program:

- Mandated counselling and/or mediation immediately after separation;
- Ability to access counselling and mediation services over a longer period so that underlying issues can be addressed;
- Ongoing access to advice or mediation over minor disputes; and
- Provision for follow-up reviews of court orders or parenting agreements.

Chapter 9

Conclusions and Recommendations

This chapter presents the conclusions that are drawn from the data in this report and provides a number of recommendations that the Court may wish to consider.

9.1 Conclusions

The following conclusions are drawn from the statistical data in Chapter Two, as well as the detailed feedback from both the professional stakeholders (registrars, counsellors, lawyers, and agency personnel) and the clients (mothers and fathers) that was reported in the subsequent chapters. The recommendations that stem from these conclusions are presented in the second part of this chapter.

9.1.1 *Statistical Data*

When compared with ABS data, the clients making child-related applications in FCWA are not typical of the general Australian population of couples with children in that:

- More than 40% of the couples live in de facto relationships, as opposed to 9% of the general population;
- The parents are almost 10 years younger than the general divorcing population;
- The relationships are shorter than the national average for divorcing couples (although no such data is available for couples separating from de facto relationships);
- There are significantly more re-partnered (stepfamilies) families than in the general population; and
- The FCWA client group demonstrates many indicators of lower socio-economic status, poverty, and social exclusion.

The similarities between the demographic profiles of the two study samples (CAC and the CAC Control Group) are such that it is valid to make comparisons concerning the litigation profiles and outcomes of these two populations.

During the first year of a typical child-related matter that had a CAC as the first court event, the counsellors spent, on average, over 3.1 hours with the parties (as opposed to about 1-1.5 hours in the pre-CAC system (the CAC Control Group). This represents more than a 100% increase in counsellor input per case before additional input (such as follow-up counselling conferences, writing case notes, or making and monitoring referrals to external agencies) is considered.

Over a similar twelve-month timeframe, the registrars' involvement with each CAC matter increased from about 1.8 hours to about 3.0 hours – an increase of about 60%.

The additional input by both magistrates and counsellors is reflected in:

- a 20% reduction in the time the matter was in the system;
- a 30% reduction in court events;
- a 50% increase in settlement rates at an early stage (pre Conciliation Conference);
- a further 25% of CAC matters settling at the first Conciliation Conference; and
- a 70% settlement rate within a 23 week timeframe.

On the statistical data alone, it is concluded that the CAC process is producing some significant outcomes in terms of efficacy.

It should be noted that although the additional input of the registrars has been recognised by additional appointments, no additional counselling staff have been provided in the Mediation and Counselling Service.

9.1.2 Professional Stakeholders: Registrars

The following conclusions are drawn from the issues and tensions that the registrars identified in their feedback about the CAC process:

- there are a number of advantages and increased effectiveness of interdisciplinary work especially in the early stages of the court process;
- the counsellors were doing a very good job, and put considerable effort into trying to achieve positive outcomes for couples;
- there is a real concern about the potential counsellor ‘burn out’;
- the CAC is less stressful and less confrontational for the clients than the formal litigation process;
- the CAC focuses the parents on their children’s issues and wellbeing rather than the adult conflict;
- the CAC promotes better identification of issues and more effective outcomes;
- there is a desire for a better understanding of the counsellors’ role;
- the CAC is a better forum for self-represented litigants (SRLs);
- there are tensions about ways that other parties (such as stepparents or grandparents) might be included in the CAC process;
- the CAC process has led to changed attitudes about the role of the court;
- the CAC process increased early settlement rates;
- notwithstanding the complex resource and administrative implications, the CAC is a better use of judicial resources by being able to spread the load of difficult cases that subsequently require judicial determination;
- the CAC has led to a reduction in the number of cases being managed in the General List (GL), with better outcomes for those clients;
- the CAC process could be extended to the Orders Contravention List (OCL) and Summary Maintenance List (SML); and
- the CACs had developed as anticipated and, in some instances, exceeded their expectations.

In terms of improving the CAC process, the registrars suggested:

- fewer conferences per day;
- sufficient resources (funding) to allow it to be done properly; and
- ensuring compliance with Pre-Action Procedures (PAP).

9.1.3 Professional Stakeholders: Counsellors

The following conclusions are drawn from the counsellors' feedback:

- the procedural guidelines (presented in Appendix A) provide a sound mechanism for quality assurance and standardisation of practice;
- counsellors require between 15 and 30 minutes to prepare for a CAC and more time to complete post-CAC documentation, but there is little allowance for this in the Court diary;
- there were some difficulties with the risk assessment component of the pro-forma;
- the risk assessment was seen as confronting for some clients and, in some instances, exacerbated the dispute and reduced the opportunities for resolution;
- CAC was not the place to address the emotional issues associated with separation;
- the time limitations of the CAC precluded in-depth exploration and discussion of complex emotional issues;
- few clients knew what they were coming in to;
- having lawyers in the CAC process had proved to be very beneficial;
- the on-site Legal Aid office is an invaluable resource;
- clients come to the CAC needing a range of things including: more information about FCWA processes, an opportunity to tell their story, a greater understanding of what the children are going through, more support, and some indication of the reality of their position;
- counsellors were unsure of the information (then) being provided to clients; and
- the initial Court application could be made more relevant with less reliance on lengthy affidavits.

The counsellors have developed collaborative professional relationships with the registrars whom they regard as being generally very good and supportive in the CAC process.

Some counsellors struggled with the role-shift from counselling to being more of a mediator and more integrally involved in the court process. The pressure of managing three CACs a day limits preparation and writing up case notes, especially in complex cases. It is concluded that assigning only two CACs a day would ease some of this pressure and reduce the stress on the counsellors.

Many of the counsellors suggested that, by individually managing a case from intake through to trial (if necessary), they could monitor referrals to external agencies and, where necessary, obtain the relevant feedback and report this to the judicial officer.

The counsellors identified a comprehensive skill-set that they draw on either consciously or subconsciously during the CAC process. They also raised a number of issues that new colleagues should be made aware of during their induction into working at FCWA.

9.1.4 Professional Stakeholders: Lawyers

The twelve lawyers who provided feedback universally supported the CAC process, especially in children's matters, to assist in identifying issues at an early stage. They considered the informality of the process and involvement of the counsellor together with the opportunity for clients to put their side of the story as core elements in assisting parents to clarify matters and, in many cases, move towards some form of agreement without the matter proceeding into the more formal litigation process.

The lawyers considered that CAC was facilitating many earlier settlements and, even if matters did not settle at the CAC, the process stimulated more positive thinking and many clients subsequently settled before they got emmeshed in the litigation process. In considering the various facets of CACs, the lawyers offered the following observations:

- some standardised documentation for the CAC could assist all parties to identify the issues, to focus the parents, and to provide a framework (agenda) for the conference;
- where a party has not complied with filing requirements or is being unrealistic and obstructing progress, the lawyers thought that the Court should make firm directions earlier;
- people will always need to be informed of their legal rights;
- family lawyers take pride in seeking to resolve matters outside of court, and, take their obligation to adequately prepare their clients very seriously;
- the risk screening component of the CAC presented some difficulties for some clients, especially when it raised issues that had never previously been identified as a concern;
- most clients just wanted a decision that will resolve their problem;
- the CAC is very useful in promoting a mediated outcome wherever possible, although there was still an element of needing to protect their client's interest, especially if there were extreme proposals being presented for consideration;
- having the court counsellor involved in the case is very beneficial;
- notwithstanding the acknowledged time constraints, it was essential for the registrars to be well prepared before the CAC and not to just rely on the counsellor's briefing; and
- having the registrars provide some sort of perspective, and to give the parents a more realistic expectation of possible outcomes is very powerful and very helpful.

Some of these lawyers admitted that they had been somewhat sceptical about the CAC process and how its potential evolution, but most reported that they were pleasantly surprised at the outcomes they had observed.

In terms of improving CAC outcomes, the first response of all twelve lawyers was that the registrars had to require compliance, and, to reinforce the fact that compliance is an important process that imposes certain obligations on lawyers. Similar comments were made in respect of the financial CACs, which are conducted by the registrars alone.

Finally, the lawyers proposed many of the features that have been included in the Child Related Proceedings model that was introduced in July 2006. Suggestions included:

- expanding intake interviews with the counsellor to about 90 minutes to allow more in-depth identification of issues;
- involving the registrars earlier in the process;
- allowing adequate time for the counsellors and registrars to prepare for the case;
- encouraging registrars to provide clear views on how a case might proceed, and possible outcomes, if the parties cannot agree;
- expediting processes so that family reports by a counsellor are available much earlier in the process, and 'interim arrangements' are as short term as possible; and
- registrars tightly managing cases rather than letting them 'drift' through the system.

The new family law system will impact on legal training. The lawyers raised, and endorsed, the concept that all law students interested in practicing family law should have both mediation and humanities units as part of their course.

9.1.5 Professional Stakeholders: Agency Personnel

The focus group participants' feedback indicated a need for agency staff to have detailed knowledge and understanding of the family law system, including:

- Family Court terminology, documentation, processes, and outcomes;
- the significance of Minutes of Consent;
- specific Family Court orders (such as Recovery or Discovery Orders);
- Orders from other jurisdictions (such as Restraining Orders);
- the implications of these various Orders for interactions between the parents, kinship networks, and with external agencies (such as schools or medical practitioners); and
- the interfaces between government departments and services (such as the Child Support Agency (CSA), Centrelink, Australian Taxation Office (ATO), the (Western Australian) Department for Community Development (DCD), and the police).

Accordingly, it is concluded that there is a need for an extensive and continuous training program for agency staff to promote understanding of the family law system. There is also a need for counsellors to have a similar level of knowledge about the service agencies.

There is little evidence of collaborative practice among the various non-government service providers. It is suspected that this is a reflection of the competitive tendering process required by government to fund these services. This highlights the need for some form of sector management that facilitates coordinated research, knowledge sharing, program development, service delivery, and evaluation.

In general, the sector has the perception that the Family Court has the authority, the capacity, and the ability to coordinate both policy development and service integration within the family law sector. This misconception of the role of the Family Court needs to be addressed, but seems to have been overlooked in the family law reform process and recent attempts to redefine the role of the Court. The absence of such a meta-framework may impede efforts to effectively reform the family law system.

There is a need to develop an interactive referral system to pass clients to various services within the overall family law system. Such a system could be based on the Internet and replicate existing models.

The various professionals identified a need and a role for parenting coordinators to assist parents with ongoing case management of individual post-separation parenting arrangements. The agencies appear to be willing to develop and implement this strategy which government family law reform policy documents identify as 'parenting advisors'.

9.1.6 Professional Stakeholders: Overall Conclusion

It is concluded that the data presented by the professional stakeholders indicates that the Case Assessment Conference process has produced a range of positive outcomes in terms of litigation profiles within the Family Court. The process has also promoted a great deal of interdisciplinary understanding and collaboration within both the Family Court and the legal community. In addition, the CAC process has stimulated an emerging level of integration among the various government and non-government agencies in the wider family law network in Perth.

9.1.7 Client Stakeholders

It is concluded that, although the mothers and fathers who provided feedback for this evaluation reported a number of common experiences, the women and men interpreted the CAC process in quite different ways.

Some of the common experiences were that:

- there was minimal delay in their application being listed for a CAC;
- the information letter provided by FCWA advising the CAC hearing was not easily understood in terms of the steps in the process, the aims, and possible outcomes;
- in cases where the parties had legal representation, the lawyers had explained the CAC process but this did not necessarily prepare the parents for the experience;
- the current potentially noisy and distressing public waiting facilities in the Court are not conducive to promoting negotiation;
- many of the clients could not distinguish between the counsellor and the registrar in the CAC, and found this confusing;
- in cases where there was a gender imbalance, the affected clients reported that they found this intimidating;
- almost all of the clients anticipated a decision as a result of the CAC, and were frustrated when this did not occur;
- both groups of clients found the language and terminology of the Court and the CAC process difficult, sometimes too sophisticated, and legalistic;
- there was little appreciation of the risk assessment role of the CAC or, in many cases, what constitutes ‘risk’;
- the absence of emotional support during either the separation process or in establishing post-separation parenting relationships was a shared experience;
- the absence of follow-up by the Court to see if agreements are working; and
- concerns about the influence that a new partner potentially had on the children.

While most of the mothers regarded the CAC as an opportunity to negotiate and resolve issues, many of the fathers saw it as a decision-making process. Other fathers saw the CAC as yet another ‘hoop’ with which they had to comply in order to achieve their long term goal (whatever that might be). None of the parents who provided feedback appreciated that the Family Court has no investigative capacity, and most seemed to anticipate a criminal court type of approach. The men appeared to need a more structured process to guide the discussions (including an agenda).

Most of the mothers were reluctant to involve their children in the formal elements of the separation process whereas the fathers felt that, in most cases, the children's views should be included in the negotiation process. The mothers' and fathers' views seem to be promoted and sustained by the misconceptions ('urban myths') that:

- at age 12 a child automatically has the right to choose which parent with whom they wish to live; and
- Final Orders were sacrosanct and, once pronounced, could neither be varied before a child turns 18 nor be challenged for at least 12 months.

The fathers also had difficulty understanding the implications of:

- the concept of 'status quo' in child-related disputes;
- the rationale of 'primary care giver' in considering child-related disputes; and
- the level of scrutiny that some of the fathers felt they were under.

The parents raised a number of issues and concerns that have been addressed in either the new Child-Related Proceedings (CRP) process in FCWA or in the services being promoted by the Family Relationship Centre (FRC). These issues included:

9.1.7.1 Child-Related Proceedings

- CAC could be more powerful and formalised;
- Make it compulsory to negotiate;
- Provide more counselling (mediation) opportunities before the registrar joins the conference;
- CAC outcomes need to be enforced with sanctions if people do not comply;
- Unqualified people's affidavits need to be checked;
- Children should be allowed to express their views but not be placed in the position of making decisions;
- Rapid determination of the dispute: and
- Provide a specific person (case manager) to ring and report when a parent fails to comply with orders.

Almost all of these issues have been addressed in the CRP model that is evolving in FCWA.

9.1.7.2 Family Relationship Centres

The Family Relationship Centre now provides many of the counselling and mediation services that the parents suggested:

- Mandated counselling and/or mediation immediately after separation, but not in the Family Court;
- Reduce the input from lawyers during the initial counselling stages;
- Legal advice should be more readily available at a fair price;
- Explain the legal situation right at the outset so that clients know precisely what is expected of them;
- Ability to access counselling and mediation services over a longer period so that underlying issues can be addressed;
- Ongoing access to advice or mediation over minor disputes;
- Provision for follow-up reviews of court orders or parenting agreements; and
- Better integration of services such as Centrelink, Child Support Agency, and the various non-government agencies.

9.1.8 Client Stakeholders: Overall Conclusion

Almost all of the mothers and most of the fathers appreciated that the Family Court (and, especially, the counsellors and registrars) was trying to do something different to assist them to resolve their disputes without recourse to lengthy litigation, many felt that this had not yet achieved its full potential. There was general support for the less adversarial approach promoted within CAC (and now supported by the FRC), and also a recognition that, in some cases, it is the formality of the Court that actually promotes the outcome.

9.2 The FCWA CAC Model Assessed

On the basis of the data presented throughout this report, our assessment is that the Case Assessment Conference process in the Family Court of Western Australia achieved its stated purposes of:

- (a) enabling the person conducting the conference (counsellor) to assess risk;
- (b) enabling the person conducting the conference (counsellor) to make recommendations about the appropriate future conduct of the case;
- (c) enabling the parties to attempt to resolve the case, or any part of the case, by agreement; and
- (d) conducting a procedural hearing (registrar) as the end process to ensure due legal process of the matter.

In our assessment, the CAC process was:

- Effective as an early intervention case assessment procedure that included a screening process of risk factors for all family members, and focused on achieving best outcomes for children;
- Effective as a referral procedure that identified the practical and emotional obstructions to reaching agreement, and recommended strategies to assist parties in finding resolutions to their disputes;
- Effective as a referral procedure that identified the practical and emotional obstructions to reaching agreement, and recommended strategies to assist parties in finding resolutions to their disputes;
- An efficient case management system that:
 - reduced the number of cases that took a litigation pathway in the Family Court of Western Australia;
 - reduced the number of court procedures for most clients;
 - reduced time taken to settle disputes; and
 - increased client satisfaction.
- A useful model to inform the development of a model of ongoing evaluation of court process and outcomes that could be applied to other jurisdictions (such as the Family Domestic Violence Court, or the Drug Court), and a number of alternative practices and initiatives being developed throughout regional WA;

- Useful in identifying the expectations and needs of the agencies that interact with FCWA (as providers of mediation, counselling, therapeutic, educational, child support, and legal services), and to enable them to develop their own programs and services in a way that is coordinated, supportive, and integrated with the court; and
- A useful model to inform the further development of an integrated family law system that encourages non-litigious approaches to managing post-separation parenting disputes.

The final section of this evaluation report presents our recommendations.

9.3 Recommendations

The following recommendations in respect of FCWA and the broader family law sector are presented for consideration. It is appreciated that many of the suggestions offered have already been incorporated in the Child-Related Proceedings model that was implemented in July 2006 or will be incorporated within the work of the Family Relationship Centres.

9.3.1 Recommendations for FCWA

Recommendation 1:

Consideration be given to FCWA continuing the policy of joint registrar and counsellor case management and, where possible, expanding it to include other processes such as the Orders Contravention List (OCL) and Summary Maintenance List (SML).

Recommendation 2:

Consideration be given to reviewing the FCWA data collection systems so that they capture the ‘settlement’ or ‘resolution’ rates rather than the ‘finalisation’ rates (noting that comparatively few matters are ‘finalised’ whereas most matters are ‘resolved’ such that litigation ceases). Similarly, it may be necessary to review terminology, so that matters that are settled are automatically removed from the Active Pending Cases List (rather than ‘adjourned’ and thus left without an obvious outcome).

Recommendation 3:

Consideration be given to reviewing the FCWA conference listings so that registrars are better able to manage the other conferences that are running concurrently with the CACs. This may have some resource implications in terms of conference rooms and availability of counselling staff.

Recommendation 4:

Consideration be given to FCWA providing some form of information sheet with the initial notification of the CAC appointment which outlines the CAC process and the expectations that clients will negotiate.

Recommendation 5:

Consideration be given to FCWA including some form of information sheet with the initial application that outlines the dynamics of the situation, parties involved, and possible outcomes. This would potentially allow the counsellor to develop an agenda for the CAC that could be available to all parties and so guide the conference.

Recommendation 6:

Consideration be given to revision of the FCWA 'Information Session' to include audiovisual representations of various court processes.

Recommendation 7:

Consideration be given to FCWA providing additional resources such as pamphlets and short videos or DVDs to be viewed when making an application to the Court. Such resources should also be available in community services, medical practices, ethnic community groups, and churches. Similar audio-visual material could be made available on various websites (such as the Family Court, and the Family Relationship Centres).

Recommendation 8:

Consideration be given to reviewing FCWA processes so that counsellors are able to have a close working relationship with the registrar, and to discuss possible case management options before the CAC.

Recommendation 9:

Consideration be given to FCWA declaring the proceedings of the CAC 'reportable', so that information gained by the counsellor could be discussed with the presiding magistrate. This would allow counsellors to individually manage a case from intake through to trial (if necessary), monitor referrals to external agencies and, where necessary, obtain the relevant feedback and report this to the judicial officer.

Recommendation 10:

Consideration be given to addressing the question of consistent practice within FCWA processes by providing more opportunities for internal training (including observation of colleagues' practice), so that the flexibility of various social science perspectives can be incorporated and accommodated within the legal framework.

Recommendation 11:

Consideration be given to FCWA reviewing the involvement of peripheral parties (such as new partners or grandparents) who have a vested interest in the outcome of proceedings, so that there is a formal protocol for involving 'significant others' in the court proceedings. Such a protocol should be well publicised among those agencies that support the Court and perhaps included in the information letter advising of the CAC appointment.

Recommendation 12:

Consideration be given to FCWA appointing at least two additional counsellors above the current FTE number to take into account the additional workloads inherent in CAC, and to reduce the potential for staff 'burn-out'.

Recommendation 13:

Consideration be given to FCWA including a review of the skill-sets and issues in the induction of new counselling staff into the Mediation and Counselling Service.

Recommendation 14:

Consideration be given to FCWA appointing a designated counsellor as community liaison or education officer to promote community awareness of the Court and its processes. This would help to address the misconceptions ('urban myths') concerning the age that a child may determine where they want to live, and the implications of the various court Orders.

Recommendation 15:

Consideration be given to FCWA inviting more service providers to give briefings to both counsellors and judicial officers at work practice meetings.

Recommendation 16:

Consideration be given to seconding FCWA counselling staff to the relevant government and non-government agencies and service providers in order to ensure accuracy of information that was being provided.

Recommendation 17:

Consideration be given to FCWA developing a training strategy that would provide agency staff with a detailed knowledge and understanding of the Family Court of Western Australia including:

- Court terminology, documentation, processes, and outcomes;
- the significance of Minutes of Consent;
- specific Family Court orders (such as Recovery or Discovery Orders);
- Orders from other jurisdictions (such as Restraining Orders);
- the implications of these various Orders for interactions between the parents, kinship networks, and with external agencies (such as schools or medical practitioners); and
- the interfaces between government departments and services (such as the Child Support Agency, Centrelink, Australian Taxation Office, Department for Community Development, and the police).

Recommendation 18:

Consideration be given for FCWA counsellors to visit services and agencies to observe services (such as the Child Support Agency, Legal Aid's ADR, Anglicare(WA)'s *Mums and Dads Forever*, and the mediation programs offered by Centrecare and Relationships Australia).

Recommendation 19:

Consideration be given to FCWA developing a capacity and the ability to coordinate both policy development and service integration within the family law sector.

Recommendation 20:

Consideration be given to FCWA in consultation with the Family Law Practitioners' Association to developing a training program for lawyers about their changing role in the Family Court and expectations of them in respect of their clients and the court processes.

9.3.2 Recommendations for the family law sector

Recommendation 21:

Consideration be given to the government and non-government agencies that support that family law sector requesting the federal government to review the competitive tendering policy (so that agencies are able to adopt a collaborative approach to developing an integrated family law sector in terms of knowledge sharing, program development, service delivery, staff training, research, and evaluation).

Recommendation 22:

Consideration be given to service providers developing a comprehensive guide to services that are available (including details of individual referral processes, costs, and estimated waiting times) and making these guides available to FCWA.

Recommendation 23:

Consideration be given to developing a specific Internet site where all agencies that provide services in the family law network could keep their information up to date.

Recommendation 24:

Consideration be given to developing an interactive referral system to pass clients between the various services and agencies within the family law system.

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August 2006

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**Family Court of Western Australia Mediation and Counselling Service,
Department of Justice Western Australia,
Policy and Procedure Manual**

7.2 CORE WORK: Case Assessment Conferences (CAC)

A Case Assessment Conference (CAC) is the first ‘Court Event’ for non-urgent matters following the filing of documents.

The aims of the CAC are to

- Provide some assessment of the facts and issues of each matter focussing on risk to children
- Determine how each matter should best proceed, and
- Recommend appropriate directions.

Should parties be able to reach agreement during the conference, Consent Orders may be pronounced at the Procedural Hearing following the CAC.

CACs enable parties to be involved in determining the most beneficial next step in the legal process so that matters may proceed to resolution and exit the system as early as possible.

CACs fall into three broad categories

- Child matters only - convened by a mediator/counsellor and concluded by a registrar conducting a procedural hearing
- Property and child matters - convened jointly by a registrar and a mediator/counsellor, concluding with a procedural hearing
- Property matters only - convened by a registrar, concluding with a procedural hearing

**7.2.1 CORE WORK: Case Assessment Conferences:
Child Matters only, and Child & Financial Matters**

7.2 1 (a) Policy:
CORE WORK: Case Assessment Conference: Child Matters Only

The conferences are privileged [FLA s19N] and are to be carried out in a professional, effective and timely manner.

Mediator/Counsellors are to act fairly, impartially, and respectfully in dealing with all clients within the bounds of safety and protection of individuals.

If the parties are represented, the legal representatives attend the CAC with them.

If any party does not have a legal representative their ‘support person’ may be involved in the CAC at the discretion of the mediator/counsellor and with the consent of the other party (see section 7.3.1 (a)).

CACs are not usually recommended

- For parties who have been through a CAC in the last 6 months, or
- When a CAC date is beyond 10 weeks of the date of filing.

7.2 1 (b) Procedure and Guidelines:
CORE WORK: Case Assessment Conferences: **Child Only Matters**

The CAC consists of several phases

- Engagement and introduction of the individual session
- Clarification and assessment during the individual session
- Discussion and negotiation
- Planning case management, and

then moves to the procedural hearing

The mediator/counsellor is to

- Peruse the relevant Family Court file prior to the CAC
- Begin by seeing each party with their legal representative, commencing with the applicant unless file information suggests otherwise.

Engagement and Introduction Phases

Engaging the parties

In all matters, the mediator/counsellor will initially engage the parties and their legal representatives in the waiting area by

- Introducing themselves to the persons on each 'side',
- Briefly explaining the process of the CAC and that they will commence by seeing the applicants first
- Escorting the party and their representative to (and from) the conference room.

Introduction to the individual session

During this phase, the mediator/counsellor establishes the parameters and ground rules of how the session is to be conducted. In doing so the mediator/counsellor will

- Emphasise the collective responsibility of all persons present in achieving this
- **Inform** the parties that the CAC operates within a defined time frame and is principally to
 - Make an assessment of the facts and issues of the matter
 - Screen for issues of child abuse and family violence
 - Identify the key concerns of each party
 - Discuss and determine how the matter should best proceed
 - Develop recommendations concerning future dispute resolution and/or therapeutic interventions

The mediator/counsellor will also inform the parties that

- The role of the legal representative is largely supportive for their client and to provide legal and other additional information
- As the CAC progresses they may see parties together without their legal representative, or they may see legal representatives without the parties depending on the issues
- If there is clear indication that the parties are able to negotiate
 - Every assistance will be given to them within the allotted time frame, and
 - Further negotiation may take place on the day if the legal representatives are available to do so, even if the mediator/counsellor may have to go to another CAC, or

- Further negotiation may take place by appointment at a mediation/counselling session with the mediator/counsellor. At the mediator/counsellor's discretion and with the parties' consent, legal representatives may or may not be present at the follow up conference.
- The CAC is privileged with the exclusions of the statutory requirements on the mediator/counsellor to make written notification of serious allegations of child abuse and threats to harm persons or property
- The mediator/counsellor must have the liberty to raise, in the joint session, at their discretion if they feel it will be helpful to the process, anything that is told to them in the separate sessions
- The mediator/counsellor will develop appropriate recommendations during the CAC, discuss those with the parties and representatives and will brief the registrar prior to, or at the commencement of, the procedural hearing

Clarification and Assessment Phases

The mediator/counsellor will

- Confirm the information regarding family members, extended family members and other persons relevant to the matter (including new partners and their children)
- Screen all parties for family violence and abuse using the FCMCS Checklist
- Provide each party and their legal representative the opportunity to outline their desired outcome for the CAC and attempt to determine the underlying reasons for those outcomes
- Assess each party's willingness and ability to negotiate
- Summarise the issues, the areas of agreement and disagreement from each party's perspective

Discussion and Negotiation Phase

This phase of the session may take place as 'shuttle' mediation/counselling or may be a joint session if the mediator/counsellor considers it safe and appropriate. They will

- Commence by establishing the ground rules of respect, politeness and remaining child focussed
- Provide a summary of each person's view of events that have brought them to the Family Court and their desired outcome
- Emphasise areas of agreement
- Help parties prioritise areas of disagreement
- Help parties consider each person's proposals and their likely consequences
- Assist the parties to move towards resolution, or move towards an interim solution and promote discussion about the next step of the process

Planning and Case Management Phase

The mediator/counsellor will

- Summarise areas of agreement and disagreement
- Confirm interim arrangements
- Summarise areas which require further consideration and need preparatory work prior to the next court event
- Using Case Management Options List, invite parties and their legal representatives to discuss the options that would move the matter forward

- Summarise and check that parties understand the case assessment outcomes
- Summarise and check that parties understand the case management plan

Procedural Hearing

The mediator/counsellor will

- Brief the registrar separately or in the presence of the parties and their legal representatives, at their discretion
- Provide the registrar with the agreed recommendations (or their recommendations if the parties have not been able to reach agreement) as to the case management plan

The registrar then conducts the procedural hearing

7.2 1 (c) Procedure and Guidelines: CORE WORK: Joint Case Assessment Conferences: Child and Financial Matters

Preliminary

The registrar and mediator/counsellor should meet briefly prior to the joint CAC to review the court file.

Conducting the Joint CAC

Interim and children's issues should be given priority

The mediator/counsellor

- will commence the CAC and deal with the child matters
- will call the registrar at an appropriate time to
 - participate in discussing the children's issues particularly where financial issues impact on children's issues, and/or
 - deal with the financial matters
- If it becomes clear that children's issues are resolved or not in dispute, the mediator/counsellor may leave the CAC

Procedural Hearing

- Where children's issues are resolved, the registrar may conduct the procedural hearing in the absence of the mediator/counsellor
- Where children's matters are in dispute the registrar will conduct the hearing with the assistance of the mediator/counsellor to provide appropriate direction

7.2.2

Checklists

CORE WORK: Case Assessment Conferences:

7.2.2 (i)

Indicators of Ability to Negotiate

INDICATORS of ABILITY to NEGOTIATE

<p>Positive Indicators for Negotiation</p>	<p>Negative Impediments to Negotiation</p>
<ul style="list-style-type: none"> • Willingness to resolve matters • Willingness of legal reps to resolve matters • Identification of achievable target • Applications similar • Level of flexibility • Willingness to consider alternatives • Mutual Comfort • Equality in negotiation abilities • Realistic expectations • Willingness to prepare for subsequent negotiations • Identification of short term or interim issues that could be negotiated • Level of preparatory work for CAC 	<ul style="list-style-type: none"> • Complexity of issues • Joint financial/children’s issues • Previous proceedings • Recency of separation • Significance of events surrounding separation • Adjustment to separation • Level of conflict • VRO/MRO and breaches • Child abuse • Family violence • Power Imbalance • Extent of negotiations before filing • Cross generational dispute • Rigidity

7.2.2 (ii) Information and Issues

CAC CHECK LIST

File Number:

	FA App/Resp	MO App/Resp	
New Partner	L/Rep	L/Rep	New Partner
New Ptnr's Ch'n	Children Name	Age	With Mo With Fa
Cohabited: / /	Married: / /	Lived Together for	Yr mth
Separated: / /		Been Separated for	Yr mth
	Father	Mother	
(1) Current Residence Contact			
(2) Main Issues Property/ Residence Contact – specifics Times/days/phone/ handover/ Health/Education Children's Wishes			
(4) Negotiability Willing / Unable / Barriers			

NOTES

7.2.2 (iii) Intake Tool

Intake Tool

DATE		FATHER's INTERVIEW	MOTHER's INTERVIEW
FILE			
FAMILY VIOLENCE	Y / N		
What Physical verbal emotional social financial			
When			
By whom / To whom			
Injury sustained / reported			
Reported – Med'l/Police			
Children witness			
Pre/At/Post Sep/Ongoing			
1 st Worst Last			
Harassment threat stalk damage to property			
Intimidation Physical/Verbal/ VRO/MRO when			
Current Risk Level			
CHILD ABUSE	Y / N		
Phys/Sex/Psych by Whom			
Neglect By Whom			
Injury/Reported			
Agencies - DCD			
Form 4 filed By Whom			
SUBSTANCE ABUSE	Y / N		
Alcohol Amount/Freq			
Drugs What/ Am't/Freq			
MEDICAL PSYCH'T'C	Y / N		
Health/Medical			
Mental Health			
Suicide-Threat-Attempt			
RISK/PARENTING	Y / N		
Low Med High			
Good Av Poor			

Useful Screening Questions for mediator/counsellor

- Do you have any concerns about being in the same room together with your partner? Has your partner ever intimidated you or harassed you into making a decision that was not what you wanted?
- Are you fearful of your partner for any reason?
- Has your partner ever threatened to hurt you in any way?
- Has your partner ever hit you or used any other type of physical force towards you?
- Have you ever called the police, requested a restraining order or sought help for yourself as a result of abuse by your partner?
- Are you currently afraid that your partner will physically harm you?
- Has your partner ever threatened to deny you access to you children?
- Do you have any concerns about the children's emotional or physical safety with you or the other parent?
- Has the Department for Community Development ever been involved with your family?
- Do you believe that you would be able to communicate with your partner on an equal basis in a Mediation/Counselling session?

Assessment Checklist

Goals

1. Clarify current residence and contact arrangements
2. Clarify each party's proposals
3. Clarify each party's main issues
4. Clarify each party's expectations of session
5. Identify areas of agreement and disagreement
6. Establish willingness to negotiate

Case Management Options

Category	Option
Dispute Resolution	Mediation/counselling (child matters) at FCMCS Referral to AADR
Specialised Court Program	Columbus
External Referral	Community mediation/counselling: Relationships Australia; CentreCare; LAWA ADR; AADR Contact handover or supervision centre Mums and Dads Forever Anger management Personal mediation/counselling Parenting program Next Step / Holy Oake Dep't for Community Development
Case Management	Interim hearing Conciliation conference (financial matters) Family report Leave to issue subpoenas Expert's report Appointment of child rep Notification to Department for Community Development Report from Department for Community Development Orders to serve third parties Discovery and Inspection of documents Pre trial conference Final hearing Long causes defended list

Overview of CAC Process: Notes for counsellor

1. Purpose – assessment not argument
2. Confidential from Court – not an assessment process
3. Strict limits on time – 15 min each – 30 min together – 15 min registrar (interrupt)
4. Main issues – overview
5. Indicators of Risk – issues affecting parenting children
6. Possible negotiation – if time permits
7. Barriers to resolution
8. Briefing of registrar
9. Procedural hearing with registrar – pathways available
10. Next steps? – counselling follow-up, court, external referral