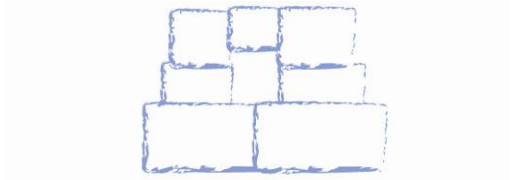

INCA CONSULTING

GENERAL PROTECTIONS CONFERENCES: CENTRALISED CASE MANAGEMENT AND USE OF STAFF CONCILIATORS

A review of the pilot

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1. INTRODUCTION AND OBJECTIVES

1.1 The General Protections Pilot

The Fair Work Commission has embarked on a program of administrative reforms to provide for more efficient processes across its dispute resolution and other business areas. One of these initiatives is the General Protections Pilot that has sought to demonstrate the effectiveness and increased efficiency of centralised case management of disputes under the general protections set out in the Fair Work Act, and the use of staff conciliators to conduct conferences under section 368(1). The Pilot is given effect through a delegation of powers by the President of the Fair Work Commission to specified FWC staff conciliators (originally dated 26 August 2014). The delegation allows staff conciliators to conduct conferences and, in doing so, to:

- Grant permission under subsection 596(2) of the Act for a person to be represented in the conference by a lawyer or paid agent
- Inform themselves by requesting information from the parties
- Mediate or conciliate the dispute
- Express an opinion, including advising the parties in accordance with paragraph 368(3)(b) of the Act.

Staff-conciliated conferences are conducted by telephone, unless there is a need for translator or there are other accessibility issues. The specified staff conciliators are provided with around 40 hours of training (on the general protections provisions and conciliation and mediation skills).

The pilot commenced on 1 September 2014 and was undertaken in Western Australia, Queensland and the Australian Capital Territory. The pilot is to run until 30 June 2015. Traditionally, and in other States and Territories, conferences are conducted exclusively by Tribunal Members, often on a face-to-face basis. The administrative processes associated with receiving applications and listing matters have been performed in a decentralised way (ie by individual registries and Member Associates).

The rationale for piloting the new approach is multi-faceted, but is in part a response to the rising number of applications to list general protections disputes[1] and the increased workload that this has placed on Tribunal Members. Conferences – whether conducted by staff conciliators or Members – aim to provide an alternate means of

[1] There was an 18% increase in applications in 2013/2014 compared with the previous year. Source: Fair Work Commission Annual Report 2013/2014.

settling disputes and to provide parties with a realistic overview of what is involved if the dispute is taken further, that is, to the Federal Court.

1.2 General protections provisions

A person can, within 21 days of being dismissed, make an application under s.365 of the Act if they are of the view that they have been dismissed in contravention of the General Protections provisions of the Act. Contravention of the General Protections provisions relate to adverse action being taken as a consequence of the exercise or non exercise of workplace rights, participation or non participation in industrial activities and workplace discrimination, amongst other things. The Act specifies that the Commission can deal with the application initially by mediation or conciliation, or by expressing an opinion or making a recommendation. If reasonable attempts to resolve the dispute are unsuccessful, or likely to be unsuccessful, the Commission must issue a certificate to this effect under s.368 of the Act. If a certificate has been issued, and both parties consent, the dispute can be arbitrated by the Commission. If the parties do not consent to arbitration, the applicant has 14 days from the date of the certificate to lodge a General Protections Court application in the Federal Court or Federal Circuit Court.

While the delegation allows for staff conciliators to conduct conferences, Members retain the exclusive authority to issue certificates.

1.3 The pilot's case management and conferencing process

In basic terms, the administrative process from the perspective of the Commission is as follows:

1. An application is received by the Registry in the relevant state or territory.
2. Assuming that the application is within time, complete and the lodgement fee paid, the application is served on the respondent by the Registry, along with a guide to general protections and a response form (form F8A).
3. An electronic file is established and allocated to the General Protections Team. The file is then managed by the General Protections Team and is a repository for all forms, correspondence, party submissions and other materials.
4. The matter is listed for a conference by the General Protections Team before a staff conciliator.
5. The response form, along with further submissions from applicants and respondents, are received by the Registry and exchanged with the applicant.

6. Prior to the conference (ideally one week prior), the electronic file is allocated to the staff conciliator.
7. The conference takes place by telephone, with conciliators bound by a procedures manual and opening and closing statements. The conference entails joint and private sessions with each of the parties and follows the standard mediation/conciliation process.
8. If the matter is resolved (eg a settlement is agreed), a Terms of Settlement document may be prepared by the conciliator if requested by the parties and provided to the parties for them to finalise.
9. If the matter is unresolved, it is referred to a Deputy President of the Commission (as nominated by the President) along with a conciliator report on the conference proceedings, a draft certificate and a covering memo.
10. If the Deputy President is satisfied that reasonable attempts have been made to resolve the matter but that it remains unresolved, a certificate is issued under s.368 of the Act.
11. If the Deputy President is not satisfied that reasonable attempts have been made to resolve the matter, the Deputy President may elect to convene a supplementary conference.

This case management approach differs from current arrangements insofar as when a Member is allocated a matter, each Member and their associate determine and action case management and the conference schedule. Members and their associates schedule conferences according to their diary availability and considering their entire caseload. There will naturally be subtle differences in approaches to case management and listing priorities.

1.4 Review of the pilot

The Fair Work Commission engaged Inca Consulting Pty Ltd, in association with Dr George Argyrous, Senior Lecturer in Evidence-Based Decision-Making at the University of New South Wales to undertake the review. The consultants were asked to make use of data collected through the Pilot in order to examine:

- The timeliness of the process
- The outcomes of conferences and the consistency in approach
- The distribution of administrative workload and cost effectiveness
- The ability to meet the needs of, and minimise risks for, parties and Tribunal Members.

The following diagram sets out the 'logic' for the general protections pilot and the framework for the review:

Rationale for the pilot

There is an increasing number of applications to have general protections disputes listed by the FWC

FWC seeks to undertake its functions in an effective and efficient manner, and to respond flexibly to changes in the number and nature of applications, and the nature of parties coming before the Commission

FWC has successfully established case management and conciliation systems and skills for other jurisdictions under the Fair Work Act.

Review questions		Key indicators
Does centralised case management and the use of staff conciliators result in the more timely handling of general protections disputes?	➔	Proportion of conferences held within 21 days of the application being made (staff conciliator vs member conferences)
Does centralised case management and the use of staff conciliators better help to resolve general protections disputes?	➔	Settlement rates, that is, without the issue of a s.368 certificate (staff conciliator vs member conferences)
Does centralised case management and the use of staff conciliators better meet the needs of parties?	➔	Satisfaction of parties with the handling of general protections matters, including the conduct of conferences (staff conciliator vs member conferences)
Does centralised case management and the use of staff conciliators result in greater efficiency for the Commission?	➔	Administrative processes are streamlined, workload is better managed and work is undertaken at a lower cost

2. METHODS

The review commenced on 26 March 2015. The following was undertaken:

- An initial briefing by representatives of the FWC Tribunal Services Branch
- A more detailed briefing by the FWC Conciliator Manager
- A review of relevant parts of the Fair Work Act, the General Protections Pilot Staff Conciliators and General Protections Administrative Procedures Manual, reviews of previous pilot programs and other materials
- A review of administrative data relating to conference outcomes (ie settlement rates) and processing times, for both staff conciliator and Member conferences
- A review of satisfaction survey data collected by FWC using an online platform, collected from parties attending both staff conciliator and Member conferences
- In-depth interviews with the FWC Conciliator Manager and the Team Leader of the ACT (ie GP pilot) registry, both of whom have also conducted conferences
- Further in-depth interviews with three staff conciliators
- A review of written feedback provided by three staff conciliators
- An in-depth interview with the Director, Client Services Branch, Fair Work Commission.

3. RESULTS

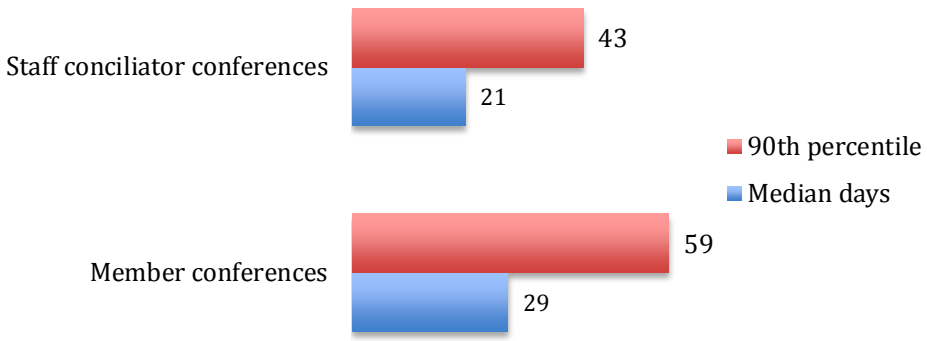
3.1 Timeliness

A key aim of the GP pilot was to reduce the time taken between lodgement of an application and the conduct of the conciliation conference. For the 444 conferences undertaken by staff conciliators between 1 September 2014 and 31 March 2015, the median time between receipt of application by the FWC and conduct of the conference was 21 days – precisely the target timeframe. This compares with 29 days for the 2,879 conferences conducted by Tribunal Members during 2013/2014. For staff-conciliated conferences, 90% of conferences were conducted within 43 days. For Member-conciliated conferences, 90% of conferences were conducted within 59 days.

A similar pattern can be seen with regard to the time between application lodgement and finalisation of the matter. The median time for staff conciliated conferences was 27 days and for Member-conciliated conferences, 41 days.

The results – set out graphically in the following figure – very clearly demonstrate the more timely conduct of conferences and the more timely finalisation of matters under the arrangements of the pilot.

Figure 1: Days between application lodgement and conference, median and 90th percentile (staff conciliators and Members)



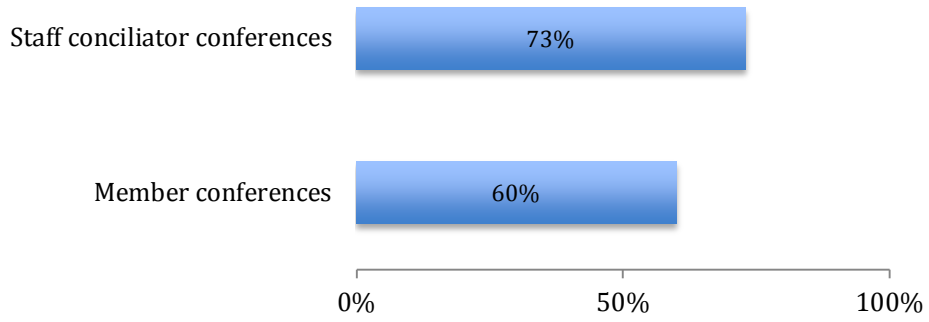
The staff conciliators, administrative and managerial staff that were interviewed noted that it was unsurprising that the pilot had demonstrated an improvement in timeliness. Because general protection matters were handled in a coordinated and centralised way, and because a general protections staff team rather than individual Members and associates allocate conferences, overall timeliness could be more easily managed. As

one informant put it: *"Timeliness can be controlled through coordinating the scheduling of the resources required to conduct conferences within timfranes."*

3.2 Settlement rates

Of the 346 matters that had been finalised by 31 March 2015 and that had featured a staff-conciliated conference, 73% were settled or withdrawn. The remaining 27% were not settled and a certificate issued by the FWC or the matter referred to a Tribunal Member for private arbitration, by agreement between the parties. For Member-conciliated conferences conducted during the most recent comparable period (the six-month period July-December 2014), the settlement rate was considerably lower at 60%. These figures are set out below.

Figure 2: General Protections matter settlement rate for Members (2013/2014) and staff conciliators (1 Sept 2014 to 31 March 2015)



Again, FWC informants were asked to explain the reasons for the improved settlement rate. It was noted that, under the pilot, conferences were conducted by specialist conciliators who were able to hone their skills and focus on achieving good settlement outcomes. Staff conciliators were provided with some 40 hours of training that focused on the General Protections provisions as well as on conciliation and mediation skills. Further, staff are encouraged to 'come together' to share experiences and strategies for reaching settlement in different circumstances – activities that may occur among Members but that are not structured or formalised. Following are some illustrative quotes:

> *"This is their specialist craft."*
>
> *"It's what they do. They're recruited specifically for this purpose."*

3.3 Satisfaction of parties

While the efficiency of the process and the settlement outcomes achieved are important, it is also of interest to examine the satisfaction of the parties involved in both staff conciliator and Member conferences. In November 2014, the Fair Work Commission commenced collecting survey data from participants via an online survey platform. It is possible to differentiate between those participating in Member conferences and those participating in staff-conciliated conferences.

FWC provided survey data based on the following:

- A sample of 92 people involved in staff conciliator conferences
- A sample of 317 people involved in Member conferences.

Both data sets were for the period 17 November 2014 to 12 April 2015.

For both samples, there was a similar representation of applicants (around 50%), applicant representatives (around 20%), respondents (around 13%) and respondent representatives (around 17%).

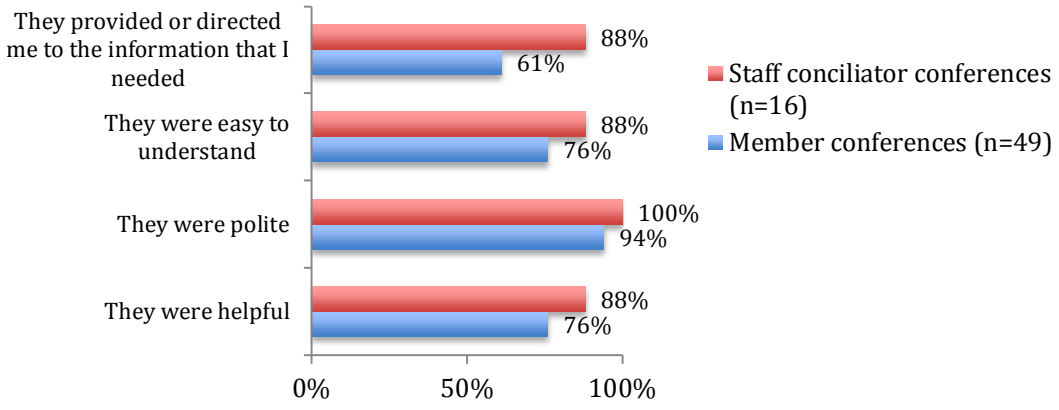
Note that, because the results of the satisfaction survey are based on a *sample* of parties rather than being based on *all* matters and all parties, it is necessary to account for sampling error before concluding that an *apparent* difference is in fact a *real* difference. A commonly used statistical technique[2] was employed to test whether the observed results (for Member conferences and staff conferences) were statistically the same or in fact different. Unless otherwise noted, all of the results set out in this section are real (ie statistically significant) differences and not due to sampling error.

Making applications and preparing for the conference

The satisfaction surveys asked some questions of applicants in relation to the contact they had made contact with the Fair Work Commission during the process of making an application to have a general protections matter heard. It is important to note here that under the pilot, applicants from Western Australia, Queensland and the ACT had contact with central registry staff rather than a local registry or a Member's Associate. Only a fairly small number of responses were received (49 applicants who had a Member-conciliated conference and 16 who had a staff-conciliated conference). These sample sizes do not allow for confident conclusions to be drawn. However, the results – as set out in the following figure – suggest that applicants who participated in a staff conciliated conference are at least equally as satisfied with these interactions as applicants who had participated in a Member conference.

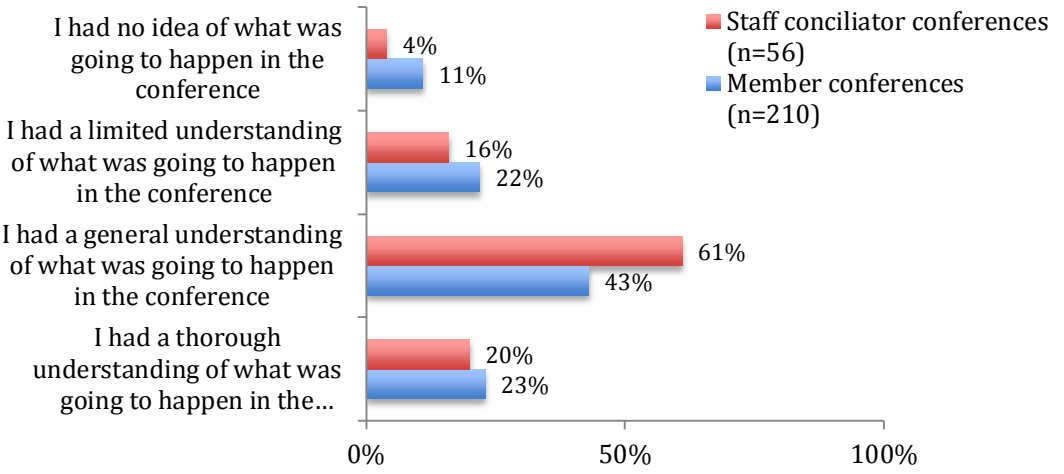
[2] A two-tailed T-test

Figure 3: Agreement with statements about interactions with FWC staff regarding applications (agree or strongly agree)



A further indicator of the level of service provided throughout the application process, including appropriate referral to explanatory information, is the 'readiness' of parties for the conference. As the following figure shows, applicants and respondents in staff conciliator conferences were more likely than those who attended Member conferences to report having a general understanding of what was going to happen in the conference.

Figure 4: Applicant and respondent understanding of what was going to happen in the conference (staff conciliator and member conferences)



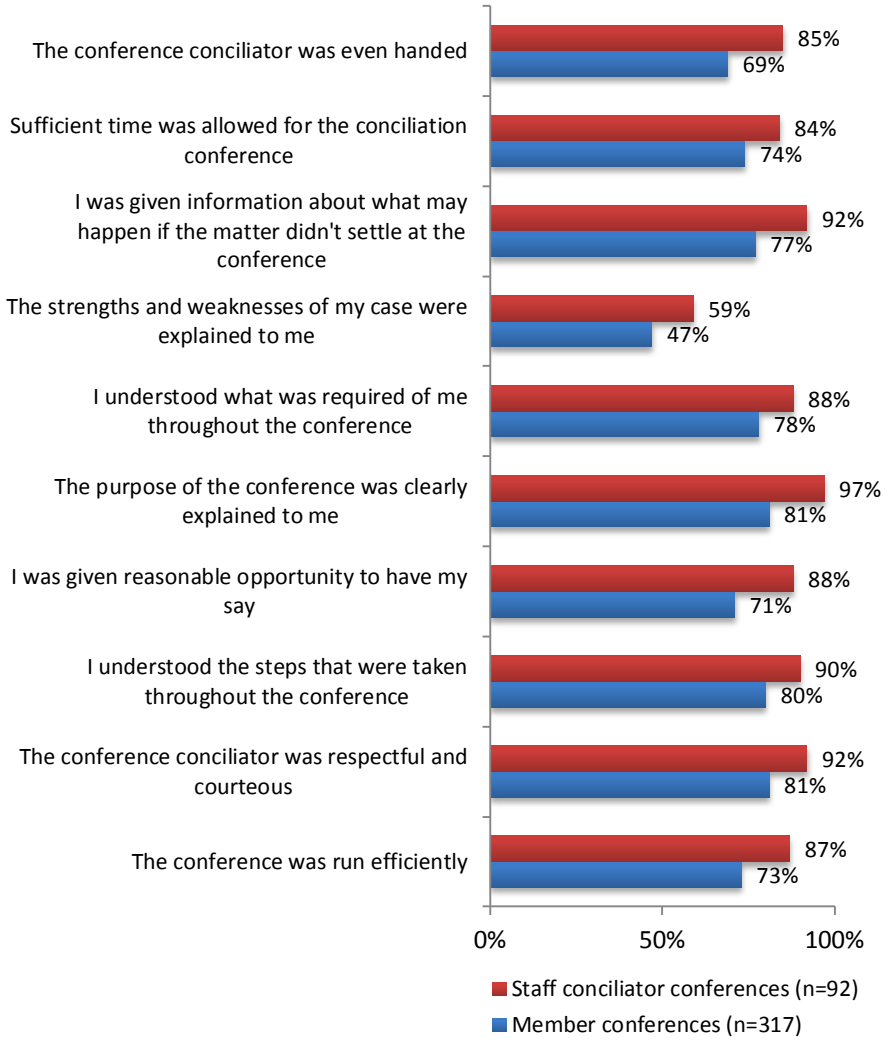
Together the above results suggest that applicants and respondents to have attended staff conciliator conferences were at least as well prepared, and probably better prepared, than those participating in Member conferences. Some informants noted that this high level of party 'readiness' could be a function of the centralised registry

team's ability to consistently and effectively follow up with parties to seek information and to answer questions.

Satisfaction with the conference

The participant surveys measured the level of satisfaction of participants in regard to various aspects of the conduct of the actual conference. Comparing the results of those who had attended a staff conciliator conference with those that attended a Member conference shows that, consistently, perceptions of Member conferences were very positive but perceptions of staff conciliator conferences were even more positive.

Figure 5. Participant agreement (agree and strongly agree) with various statements about the conduct of conferences (staff conciliator and Member conferences)



The results, as set out in Figure 5, may be due to the use of skilled staff conciliators and the training and administrative support that they have received. There may however be other reasons for the apparent differences. For example, the apparent differences may instead be a reflection of location – that is the States/Territories where the parties were located. The higher levels of satisfaction may also be due to the more timely conduct of the conference rather than way the actual conference was conducted.

Three further measures relating to satisfaction with the conduct of conferences showed no statistical difference between member and staff-conciliated conferences. These were:

- I was able to understand any technical language which was used
- The conference conciliator asked about the outcome I was seeking
- I understood that I had the option to pursue my application if it was not resolved at the conference[3]

There were no measures that showed significantly lower satisfaction with staff conciliator conferences than for Member conferences.

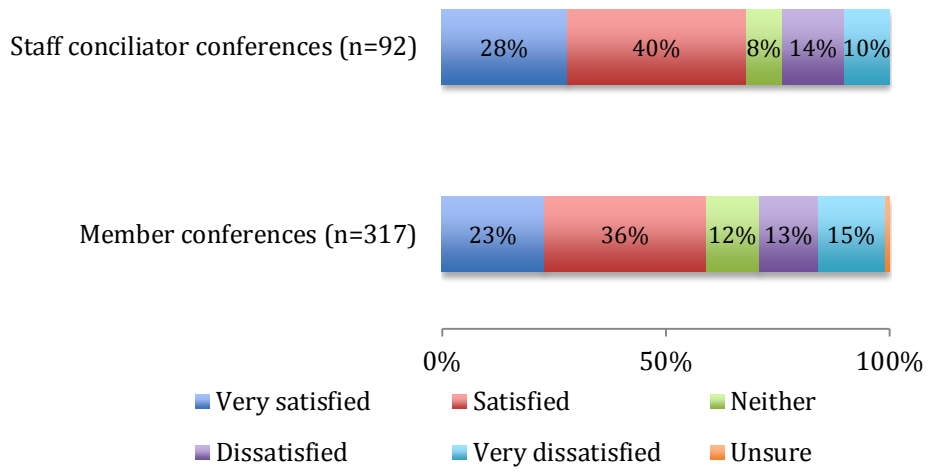
It is an important role of the conciliator to, at the outset of the conference, make parties understand the conference process. After the preamble given by the conciliator, 92% of applicants who participated in a staff-conciliated conferences said that they had at least an adequate understanding of what was about to happen in the conference. This is similar, and statistucally no different, to applicants participating in Member-conciliated conferences (89%).

Overall satisfaction

In terms of overall satisfaction with the entire general protection conciliation process, there was no statistical difference between Member and staff-conciliated conferences, despite the apparent differences in the results set out below. The interpretation of these results should be as follows: a majority of participants were satisfied with the conference process, regardless of who conducted the conference. Using staff conciliators has not resulted in reduced participant satisfaction.

[3] Note that this question was only asked of applicants (n= 164 for Member-conciliated conferences and n=46 for staff-conciliated conferences)

Figure 6: Overall satisfaction with general protections conferences (staff conciliator and Member conferences)



It is worth noting here that conciliators reported that they had experienced little if any objection from parties or their legal representatives with respect to their conduct of the conferences One conciliator reported that there was some initial curiosity on the part of one legal representative as to why the conference was not being conducted by a Member, as had been the case in the past. This was, however, an isolated case and conciliators felt that there was a high degree of comfort with staff conducting conferences under the delegation of the Commission President. This response may in part be due to the acceptance and familiarity of parties of staff conciliators who have been conducting unfair dismissal conferences since July 2009.

3.4 Administrative efficiency

The improved timeliness associated with the General Protections Pilot is suggestive of a more efficient process. However, it was further noted by informants that it was considerably more efficient to have qualified staff conciliators conducting conferences, effectively freeing up Members and their Associates to focus on higher-level work. Through careful listing of matters (controlled centrally), staff conciliators can be fully utilised from a human resources perspective. It is important to note here that matters are routinely 'over-listed' on the assumption that some will not proceed, further ensuring the efficient use of available human resources.

It was also noted that a centralised registry team could more cost-effectively administer the process than a decentralised and disconnected group of Member Associates. The

centralised registry has allowed for the development of standardised letters and the creation of an electronic rather than paper-based filing system, described by one informant as *"a big efficiency win."*

It was reported that the administrative model for the General Protections pilot was lifted from the model refined through the conduct of case management and conferencing arrangements for Unfair Dismissal matters. As a result, few 'teething problems' have reportedly been experienced. Generally, there was a very positive view among conciliators of the service provided by the general protections administrative team and the strength of the administrative process. It was noted by some informants that the administrative team came together quickly to support the pilot. It was further noted that the team was well led and ensured that all procedural steps were documented and well communicated. There were some rare administrative errors reported and a few areas where process improvement was thought possible:

- always ensuring that the phone numbers for attending parties are verified before being passed to the conciliator – it was reportedly frustrating for the parties and time consuming to have to find the correct number during the actual conference
- always ensuring that correspondence, submissions etc are appended to the listing and/or sent directly to the conciliator.
- ensuring that conferences are allocated to conciliators, with sufficient notice and allowing enough preparation time – although a rare event, there have reportedly been some instances where conciliators are expected to 'step in' at the last minute, largely unprepared
- avoiding booking back to back conferences - *"You're on the ball the whole time…you need a break"*

There was a view expressed by some that, particularly if the pilot approach was implemented more widely, consideration should be given to whether the Canberra office was the appropriate location for a central registry. Some thought that Melbourne would be a better location, given the resources and support available there. Others thought that it was good to build capacity in other offices and that the general protections registry provided a good means of doing this.

Particular difficulties have reportedly been experienced in allocating matters to Western Australian conciliators and providing them with pre-conference administrative support. The different time zone has been problematic and sometimes not been taken into account, meaning that a few 'hiccups' have been experienced. It was also noted that due to the time difference, particularly in daylight saving months, administrative support was available to Western Australian conciliators for only part of the day.

A very consistent theme throughout the discussions with informants was the large number of conferences conducted where the general protections provisions provided no jurisdiction for the matter. In other words, a large number of applications are made where there has been no breach of the law, even though the applicant may feel that they have been treated unfairly.

This situation reportedly arises for a number of possible reasons:

- an applicant's unfamiliarity with the law and the general protections provisions
- general protections being a relatively new and unfamiliar set of provisions, including to some legal representatives
- general protections law not being as fully tested as other areas of the law (and so seen as a possible avenue for getting a particular outcome)
- obstinate or embittered applicants who want to inconvenience the respondent or 'make them answer', regardless of the legality of their actions
- general protections provisions offering an avenue for complaint where unfair dismissals provisions do not apply (for example, dismissal before the six month minimum employment period)
- The general protections pathway being confused for the more appropriate unfair dismissal route.

It was suggested that a triage approach to case management could be used to 'weed out' applications that were clearly 'out of jurisdiction' and to help applicants to better understand what can and cannot be achieved through a general protections conference. Various possible approaches were identified that would help to make better use of general protections conferences, including:

- Administrative staff being tasked with following up questionable applications, using a script to ensure that applicants are well-informed and want to proceed with the conference
- Questionable applications being flagged and referred to conciliators (say, on a roster basis) to explore the merits of the application and to determine whether general protections is the appropriate jurisdiction (and advising the applicant accordingly)
- Providing clearer information and 'decision tree support' on the FWC website
- Ensuring that FWC helpline staff members (Registry staff) are aware of the general protections jurisdiction and ensuring that they do not inadvertently – provide information to suggest that it as alternate dispute resolution pathway.

It was noted that a triage approach has been used to good effect for the anti-bullying jurisdiction and that a similar approach could be applied to general protections. For

example the anti-bullying team makes initial contact with an applicant by telephone as soon as possible after the application has been lodged. The purpose of the call is to ensure that the applicant is fully aware of the process and the potential restrictions of the legislation prior to the application being served on the other parties. It was further noted that it was often very evident from the application and response whether the application had merit within this jurisdiction and that there should be an intervening step before matters are listed. Following are some illustrative quotes:

"We could put in some questions and buffers along the way"

"You can see on the papers straight away what needs to be dealt with properly."

"We need to appropriately triage out the unmeritorious applications."

In order to assess the circumstances of a dispute, it was thought necessary for the respondent form (F8A) to provide a space for respondents to set out the reasons for the applicant's dismissal. As one conciliator said *"that's the crux of the matter."* A relatively minor frustration was also reported in relation to the F8A in that it was often not forwarded to applicants. It was suggested that a reminder should be clearly provided on the form itself, not just on the cover sheet. It was also suggested that registry staff could play a role in ensuring that the response form has been provided to applicants prior to the conference. If parties are not in receipt of all available information the conference may be delayed or even adjourned to allow parties time to consider the material provided by the other side.

Although all informants acknowledged the importance of efficiency – for the FWC and for parties – it was noted that assisting the parties to resolve a dispute was also a prime concern. A couple of informants made the point that key performance timeliness indicators should not get in the way of the conciliator facilitating an agreeable resolution to disputes. In practical terms, this meant not 'winding up' conferences where a settlement may be imminent, just because the allocated time has elapsed. Conciliators wanted the flexibility to hold over conferences where a settlement was possible, even though this may impact on the average matter finalisation times. It is generally thought that general protections conferences require a minimum of two hours to allow the parties time to consider and discuss the issues in dispute and decide whether or not to resolve the matter in this forum or proceed to court.

The timeliness benchmark of 21 days was questioned by some informants. It was noted that, often, conferences had to be delayed because parties had not had an opportunity to prepare, rather than because of FWC administrative delays. It was further noted that a longer lead time, say 28 days, would provide more opportunity for

parties to find a resolution without the need for a conference. The implication of a longer timeframe could be that fewer conferences are delayed or adjourned, allowing for more efficient use of staff conciliators' time.

3.5 Other issues

The challenges of general protections conferences

It was consistently noted by conciliators that general protections was a particularly complex part of the Fair Work Act and, as already noted, that there were still areas of the legislation being tested. It was also noted that, for some disputes at least, the 'stakes are high' in terms of settlement amounts and the ramifications for the employer and workplaces generally. Some disputes and conferences feature complex legal arguments and less of the interest-based arguments seen in unfair dismissal conferences. Conducting conciliation conferences was thought to be particularly challenging and conciliators need a deep understanding of the general protections provisions in the Act and associated case law.

It was further noted that general protections conferences are a statutory obligation of the Commission, with Authority delegated by the President. Conciliators very much represent the Commission and its standing and are not simply providing a conciliation service. For staff conciliators general protections conferences can at times be a high-pressure environment. As one conciliator said: *"When you're dealing with senior partners you need to know your stuff."* Conciliators reported that they took a more highly structured and matter-of-fact approach to general protections conferences rather than the helpful, problem-solving tone taken in unfair dismissal conciliations.

On the other hand, some general protections disputes may feature strong emotional elements, where applicants appear to be looking for a cure for the hurt or to save face rather than a monetary outcome. As one conciliator said: *"Reliance on the law doesn't always settle it though – you have to deal with the emotional stuff in private session."* The job of the conciliator is to assist the parties to find a way of settling the dispute, through monetary, emotional or practical means. But it is also to inform parties where they are unlikely to get a satisfactory outcome and may experience further inconvenience, suffering and expense should the matter proceed to Court. Conciliators reported that they work hard to paint a realistic picture of Federal Court processes, timeframes and costs, to encourage parties to consider all options for a remedy to resolve the dispute within the FWC conciliation conference.

Parties present at conferences in various states of openness for conciliation. Some are simply going through the motions, with an eye of Federal Court mediation as the

means of reaching settlement – their aim from the conference is simply to obtain a certificate. Others simply want a hearing and are prepared to settle on the most basic terms, providing that they have been able to 'make their point'. And others are somewhere in the middle – they do not want a drawn out legal process but are looking for a settlement to properly compensate them for their losses. Following are some relevant comments made by conciliators:

> *"Are they going through the motions or are they open to conciliation? That's the skill of the job."*
>
> *"It's part of my job that people who don't settle at least know the consequences of taking it further."*
>
> *"You spend time engaging. You may form a view that they'll lose in court but they still wish to proceed. It's exhausting but I'm very committed to them."*

Clearly, dealing with these various dynamics requires strong conciliation skills, along with a very solid understanding of the law. It was repeatedly noted that only the highest-performing conciliators should be called upon to conduct general protections conferences.

Training and the procedures manual

The training provided to conciliators was highly regarded. In particular, conciliators appreciated hearing from a Federal Court Registrar about the Federal Court's processes and the 'experience' for parties to disputes that end up in the Federal Court. Conciliators reported that they were able to relay this information to conference participants, to good effect.

The procedures manual was also regarded as helpful, though there were distinct differences of opinion with regard to a number of the procedures. Firstly, the opening script was used consistently and happily by most conciliators. Others found it awkward and too lengthy and felt that it left parties disengaged by the end. These conciliators substituted their own words where the flexibility existed.

There was a particular dislike (among a couple of conciliators) for the need to get all parties to agree to treat the conference as confidential and to ask parties to agree not to tape the proceedings. The assurances were thought to be fairly hollow, particularly as the conferences are held by phone and that parties could be listening in without identifying themselves.

Other informants noted the importance of confidentiality as a foundation for the conference and the scripted statements as a protection for conciliators. As one

informant said: *"Confidentiality is one of the bedrocks of alternate dispute resolution."* Although it may seem awkward to some conciliators, it seems unlikely that there will be a deviation from this practice. Nonetheless, there could be some further discussion among conciliators about the ways to cover confidentiality in a more pragmatic fashion.

4. CONCLUSIONS AND RECOMMENDATIONS

The General Protections Pilot has demonstrated in emphatic terms that centralised case management and the use of staff conciliators is a more efficient and effective arrangement than the traditional one. The approach provides for a more timely and efficient process, better pre-Court settlement rates and more satisfied participants. The approach benefits parties to general protections disputes as well as the Fair Work Commission. There appears to be no reason to not adopt the approach nationally.

Assuming that FWC decides to formalise the approach and implement it more widely, the following should be considered:

1. Conduct general protections conferences using a specialist and trained team of the highest-performing conciliators. Conciliators should have the necessary experience, subject area knowledge, temperament and gravitas to deal with high-pressure environments, complex legal arguments and the emotional needs of parties.

2. More closely examine applications and responses and undertake more active case management or triage of potentially unmeritorious applications. Develop an efficient means of undertaking this work, building on the approach used for the anti-bullying jurisdiction.

3. Provide more useful information on the FWC website on the general protections jurisdiction and to assist people to determine of it is the right jurisdiction in which to pursue their claim. Also provide information on what to expect from a conference and the common outcomes achieved.

4. Provide training for FWC helpline staff to ensure appropriate referrals to the general protections pathway.

5. Acknowledge the demanding nature of conducting conferences – avoid booking back-to-back conferences for conciliators. Also acknowledge the likelihood of some conferences running over time and/or needing to be held over – conciliators need to allow parties the time to put their case, express their feelings and emotions and to consider their position.

6. Avoid 'last minute' allocations of conferences to conciliators where possible and/or if necessary delay the conference start time to allow conciliators to read the material provided for the conference. It is evident from conciliator feedback that general protections matters require significantly more preparation time than unfair dismissal matters.

7. Develop a mechanism to ensure that all relevant forms, submissions and contact details are provided to conciliators prior to conferences.

8. Ensure that the centralised registry is appropriately located and resourced to meet the administrative needs of general protections conferences.

9. Continue to support information sharing and reflection among conciliators – to discuss good practice and improve procedures.

10. Consider setting a target (ie KPI) of 28 days between application and the conduct of the conference. It may allow for a better experience for the parties and more efficient use of FWC human resources.