



National  
Alternative  
Dispute  
Resolution  
Advisory  
Council

# Annual Report

1997-98

NATIONAL ALTERNATIVE DISPUTE  
RESOLUTION ADVISORY COUNCIL

ANNUAL REPORT

1997-98

Canberra



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ISBN

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## **FIRST COUNCIL MEMBERSHIP**

Members of NADRAC are appointed by the Attorney-General. Mr Richard Moss is an ex officio member of NADRAC by virtue of his position of Deputy Secretary in the Attorney-General's Department.

The remaining members of Council were appointed for a two year term which expired on 30 October 1997. In October 1997 the members' appointments were temporarily extended to 30 December 1997. From 1 July 1997 to 30 December 1997 the continuing members of the Council were:

### **Chairperson**

Professor Hilary Astor

Abbot Tout Professor of  
Litigation and Dispute  
Resolution, University of  
Sydney

### **Members**

Quentin Bryce AO

Principal Women's  
College University of  
Sydney

Associate Professor Gay Clarke

Faculty of Law  
Queensland University of  
Technology

Jennifer David

Dispute Resolution Consultant

Magdeline Fadjar

Senior Member  
Immigration Review Tribunal

Wendy Faulkes

Director  
NSW Community Justice Centres

Susan Gribben

Executive Director  
Relationships Australia (Vic)

Richard Moss

Deputy Secretary  
Attorney-General's Department

The Hon Justice Nahum Mushin	Family Court of Australia
Kurt Noble	Community Justice Program Department of Justice and Attorney-General (Qld)
Oscar Shub	Partner, Allen Allen & Hemsley (Sydney) Consultant, Parker & Parker (Perth)
Philip Theobald	Barrister, Brisbane
Dr Josephine Tiddy	Dispute Resolution Consultant
Dr Gregory Tillett	Senior Research Fellow in Conflict Resolution University of Western Sydney (Nepean)

These members of the Council last met in October 1997.



John Steele

Community Mediation Training and  
Development Officer  
Community Mediation Services (SA)

Kerrie Tim

Team Leader  
Diversity Values Conduct Team  
Public Service and Merit Protection  
Commission

## CHARTER

1. The National Alternative Dispute Resolution Advisory Council (NADRAC) is an independent advisory council charged with providing the Attorney-General with coordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.

2. The issues on which NADRAC will advise will include the following:

- minimum standards for the provision of alternative dispute resolution services;
- minimum training and qualification requirements for alternative dispute resolution practitioners, including the need, if any, for registration and accreditation of practitioners and dispute resolution organisations;
- appropriate professional disciplinary mechanisms;
- the suitability of alternative dispute resolution processes for particular client groups and for particular types of disputes;
- the quality, effectiveness and accountability of Commonwealth alternative dispute resolution programs;
- ongoing evaluation of the quality, integrity, accountability and accessibility of alternative dispute resolution services and programs;
- programs to enhance community and business awareness of the availability, and benefits, of alternative dispute resolution services;
- the need for data collection and research concerning alternative dispute resolution and the most cost-effective methods of meeting that need; and
- the desirability and implications of the use of alternative dispute resolution processes to manage case flows within courts and tribunals.

3. In considering the question of minimum standards, the Council will examine the following issues:

- the respective responsibilities of the courts and tribunals, government and private and community sector agencies for the provision of high quality alternative dispute resolution services;
- ethical standards for practitioners;

- the role of lawyers and other professional advisers in alternative dispute resolution;
- legal and practical issues arising from the use of alternative dispute resolution services, such as the liability or immunity of practitioners, the enforceability of outcomes and the implications of confidentiality; and
- the accessibility of alternative dispute resolution services.

4. The Council may make recommendations of its own motion to the Attorney-General on any matter relevant to the Council's Charter. In addition, the Attorney-General may, from time to time, refer particular issues to the Council for consideration and report.

5. As the Council's time and resources permit, it may provide comment on matters relevant to its Charter to any Commonwealth, State and Territory or private organisations with an interest in alternative dispute resolution. A copy of any such submission must be provided to the Attorney-General as soon as possible after the submission is dispatched.

6. In performing its functions, the Council will consult broadly with alternative dispute resolution organisations, service providers and practitioners, courts and tribunals, government, the legal profession, educational institutions, business, industry and consumer groups, and community organisations as well as the Family Law Council and the Family Services Council, when appropriate.

7. The Council will develop a forward work plan, including reporting dates, for each year and provide a copy of that work plan to the Attorney-General.

8. The Council will provide the Attorney-General with a report of its operations as soon as possible after 30 June each year.

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# 1. INTRODUCTION

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1.1 The National Alternative Dispute Resolution Advisory Council (NADRAC) was established in October 1995 to provide independent advice to the Attorney-General on policy issues relating to the fast growing alternative dispute resolution sector. The need for a national body to advise the Commonwealth on issues relating to the regulation and evaluation of alternative dispute resolution (ADR) was identified in the 1994 report of the Access to Justice Advisory Committee (the "Sackville Committee") entitled 'Access to Justice-an Action Plan'.

1.2 As indicated in the 1996/97 Annual Report, interest in the application of ADR processes to both formal and informal disputes continues to grow. The national scope of this application is reflected in the promotion of ADR to small business and the statutory incorporation of ADR in the *Aged Care Act 1977* (Cth) to resolve disputes in aged care facilities. There is an increasing focus on dispute prevention and the development of dispute resolution clauses as part of industry codes as a result of amendments to the *Trade Practices Act 1974* (Cth). Many agencies are considering models for ensuring quality dispute resolution processes, such as the 'Benchmarks for Dispute Avoidance and Resolution - a Guide', prepared by a Round Table convened by the Australian Competition and Consumer Commission.

1.3 NADRAC's views have been sought on many ADR initiatives and the Council has welcomed the opportunity to make contributions to the ongoing discussions as to the role of ADR within Government and in the broader Australian community.

1.4 Within this environment it is NADRAC's role to provide the Attorney-General with co-ordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.

1.5 NADRAC members are appointed for their personal expertise in ADR and related matters, not as the representatives of any particular organisations or interest groups. To encourage the provision of balanced policy advice, NADRAC's membership reflects a variety of ADR backgrounds. As a result, the Council included members with expertise in the conduct of family dispute resolution, community mediation, conciliation, commercial mediation, commercial arbitration and litigation, in addition to members with expert knowledge of court and tribunal processes (including court-connected mediation) and academics with a special interest in the ADR field.

1.6 New members of the Council also have a similar diversity of expertise to bring to bear on the Council's advice to the Attorney-General. The diversity of its membership again has proved invaluable to the Council during this reporting year.

1.7 The most significant achievement of the Council during the year was the release of the Council's Discussion Paper "Issues of Fairness and Justice in ADR", which provides an indepth analysis of the barriers and strategies to ensure fairness and justice in ADR.

1.8 Significant resources were also put into the Council's submission in response to the Attorney-General's Department Discussion Paper "Primary Dispute Resolution Services in Family Law".

1.9 Over the year, the Council has provided advice to the Attorney-General and commented on matters as wide-ranging as the Australian Law Reform Commission Issues Paper "Rethinking the federal civil litigation system"; the Department of Workplace Relations and Small Businesses "Resolving Small Business Disputes" kit; the Franchising Policy Council's Franchising Code; the Standards Australia draft Standard on Dispute Resolution; and the Australian Competition and Consumer Commission Discussion Paper "Implementation Strategies for Round Table Benchmarks for Small/Large Business Disputes".

1.10 The Council believes that during 1997/98, it has continued make a useful contribution to the quality of ADR services in this country.

## **2. STRUCTURE OF COUNCIL**

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### **Council Membership**

2.1 The number of members of Council at any one time and the length of their respective terms of appointment is a matter which lies wholly within the Attorney-General's discretion. During the majority of the 1997/98 reporting year, the Council had an establishment of 14 members. Following the expiry of the appointments of the inaugural members of the Council in December 1997, seven new members of the Council were appointed in April 1998.

2.2 One member of the Council is appointed by virtue of his or her position as a Deputy Secretary within the Attorney-General's Department. Mr Richard Moss has held this ex officio position since his appointment as a Deputy Secretary of the Department on 25 July 1996.

2.3 Most new members of the Council were appointed by the Attorney-General for a term of three years commencing on 6 April 1998 and expiring on 5 April 2001. Susan Gribben was re-appointed to the Council for a further two year term expiring on 5 April 2000.

2.4 While, strictly speaking, it is outside the reporting period, three further new members were appointed to the Council on 11 August 1998. They were each appointed for a term of two years expiring on 10 August 2000. The second Council has an establishment of ten members. Details of the membership of the Council during the reporting period are set out on pages i-iv of this Report.

2.5 NADRAC is not a representative body. The members are appointed in their own right as individuals with recognised expertise in dispute resolution processes. Nevertheless, Council members have links to a broad range of organisations in the dispute resolution field from courts and tribunals to legal professional bodies and community mediation and conciliation organisations.

### **NADRAC Secretariat**

2.6 During the reporting period there were changes in the Secretariat staff of the Council. The Council would like to take this opportunity to thank past staff of the Secretariat; Serena Beresford-Wylie, Director; Margaret Harrison-Smith and Melissa Bullen, for their significant contribution to the work of the Council.

2.7 The NADRAC Secretariat is located in the Civil Justice Branch of the Civil Law Division, Commonwealth Attorney-General's Department.

2.8 The staffing of the Secretariat for 1997/98 was:

Director	Serena Beresford-Wylie	(1 July 97- 29 May 98)
	Vacant	(from 1 June 1998)
Legal Project Officer	Margaret Harrison-Smith	(1 July 97 - Oct 97)
	Melissa Bullen	(Nov 97 - 21 June 98)
	Mandy Doherty	(from 22 June 1998)
Administrative Officer	Cate Wells	

2.9 Contact details for the Secretariat are:

Telephone: (02) 6250 6897

Fax: (02) 6250 5911

E-mail: NADRAC@ag.gov.au

Postal Address: Robert Garran Offices  
National Circuit  
BARTON ACT 2600

Location: Robert Garran Offices  
National Circuit  
BARTON ACT 2600

3.0 NADRAC has a homepage where information about its activities can be found:

<http://law.gov.au/aghome/advisory/nadrac.htm>

### 3. COUNCIL'S ACTIVITIES

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#### **Council Meetings**

3.1 In part due to budgetary constraints, and in part due to the changeover period between the membership of the Council, only two Council meetings were held during the 1997-98 reporting period.

3.2 The inaugural members of the Council held their last meeting on 16 and 17 October 1997 in Canberra.

3.3 Seven of the new members of the Council held their first meeting on 29 May 1998 in Canberra. NADRAC would like to take this opportunity to express its thanks to the Commonwealth Attorney-General's Department for providing a venue on both occasions.

3.4 NADRAC is an independent advisory Council to the Attorney-General. While the Council Secretariat is based within the Attorney-General's Department and receives a measure of administrative support from the Department, the Council is nevertheless independent of the Department. The Council acknowledges, however, that it must maintain familiarity with the direction of Government ADR policy if it is to make practical policy recommendations that will be implemented. Similarly, the Council considers that the Department's function of developing and implementing Government ADR policy must be enhanced if it is permitted to share in the Council's deliberations on ADR issues. Accordingly, the Council decided this year to invite the Departmental officer responsible for ADR policy to attend NADRAC meetings in the capacity of observer. Renée Leon, then Assistant Secretary, Civil Justice Branch, and Sue Pidgeon, Ms Leon's subsequent replacement, both attended the NADRAC meeting held in Canberra on 29 May 1998 as observers. Ms Pidgeon continues to attend the Council in that capacity.

#### **Guests at Council Meetings**

3.5 Council members were pleased that three guests were able to address the Council's October 1997 meeting. Iian Ross, Vice President, Australian Industrial Relations Commission addressed the Council on the use of conciliation in the Commission and the 'Unfair Dismissal Research Project'. Tim Keady, Chief Executive, ACT Department of Justice and Community Safety<sup>1</sup>, addressed the Council on the ACT Mediation Bill which had been recently passed by the ACT Assembly. Rolf Driver, Senior Government Solicitor, Government and Revenue, Office of the Australian Government Solicitor, spoke about the Australian Government Solicitor's experience of ADR as a tool to resolve federal disputes.

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<sup>1</sup> previously the ACT Attorney-General's Department

3.6 Norman Reaburn, then Acting Secretary of the Attorney-General's Department, also addressed the October meeting, thanking the inaugural members of the Council for the valuable contribution made to NADRAC. Council members were most appreciative of Mr Reaburn's remarks.

3.7 Dr Margaret Browne, First Assistant Secretary, Legal Aid and Family Services Branch and Richard Morgan, Assistant Secretary, Family Law Branch, Attorney-General's Department addressed the May 1998 meeting. Dr Browne and Mr Morgan outlined the proposed pilot involving community based organisations in assisting with the prevention and resolution of disputes over contact arrangements made under the *Family Law Act*.

3.8 The Council would like to extend its thanks to these guests for agreeing to meet with the Council.

## **Committees**

3.9 During the 1997/98 financial year, the Council maintained three substantive committees: the Diversity Committee, the Registration and Accreditation Committee and the Small Business Committee.

3.10 Copies of the Terms of Reference for each of these Committees are appended (Appendix A).

### *Diversity Committee*

3.11 In accordance with its terms of reference (Appendix A), the Diversity Committee is charged with the task of considering:

- . areas of difference between client groups which can affect the fairness and justice of ADR procedures and outcomes;
- . factors within particular dispute resolution processes which can affect the fairness, justice and suitability of those processes, for particular client groups and disputes; and
- . appropriate standards for the provision of ADR services given the diversity of client needs and ADR processes.

3.12 During the reporting period, the Committee continued work on the draft Discussion Paper commenced during the previous financial year. The Discussion Paper "Issues of Fairness and Justice in Alternative Dispute Resolution" was issued in November 1997 for public consultation which ended in March 1998.

3.13 In its scope, the Discussion Paper traversed several issues including:

- . the extent to which and in what circumstances dispute resolvers should intervene to ensure fair and just outcomes;

- . what legitimate strategies could be used to ensure fair and just outcomes and whether guidelines are needed on fairness, neutrality and the use of dispute resolver power to redress imbalances;
- . whether agreements reached through ADR processes should be reported (within the confines of their confidentiality) to encourage a feeling of precedent;
- . barriers to fairness and justice in ADR for user groups including gender issues, minority cultural groups in Australian Society, age, people with disabilities, minority sexual preferences, rural and remote communities, and socio-economic power differences; and
- . recommendations for policy makers and guidelines for practitioners.

3.14 In response to the Discussion Paper, NADRAC received 18 submissions and the Council would like to extend its thanks to those organisations and individuals who made submissions. The submissions were generally supportive of the issues canvassed in the report and the need for guidelines for practitioners. A list of individuals and organisations who provided submissions is at Attachment B.

3.15 In May 1998, the Council considered how it could progress the issues raised in the Discussion Paper and in the submissions received. It is envisaged that the final report will provide users and practitioners with practical recommendations to address fairness and justice issues in ADR.

3.16 Members of the Diversity Committee were Oscar Shub (Convenor), Professor Hilary Astor, Susan Gribben, Kurt Noble, Dr Josephine Tiddy, and Margaret Harrison-Smith of the NADRAC Secretariat.

3.17 At the end of the reporting period, members of the Diversity Committee were Barbara Filipowski (Convenor), Richard Moss, Bernadette Rogers and Mandy Doherty of the NADRAC Secretariat. Kerrie Tim joined the Committee upon her appointment to the Council.

3.18 The Committee hopes to finalise the report and have it approved by Council for publication in 1999.

#### *Registration and Accreditation Committee*

3.19 The Registration and Accreditation Committee's terms of reference (Appendix A) require it to consider: minimum standards, minimum training and qualification requirements, compliance mechanisms, the need for registration, the need for accreditation and the respective responsibilities of the courts and tribunals, government and/or private and community sector agencies in relation to these matters. In view of the size of the task, Council decided that the Committee should confine itself, initially, to the issue of the registration and accreditation of mediators and mediation organisations.

3.20 The Committee of the inaugural Council continued working on a draft Discussion Paper, which was considered by the Second Council in May 1998. At this meeting it was decided that this project should be given the Council's highest priority. The Council wishes to consider expanding the scope of the Discussion Paper and accordingly, the anticipated date for release for public comment has been changed to August 1999.

3.21 During the reporting period there were no meetings of the Registration and Accreditation Committee.

3.22 Members of the Committee were Philip Theobald (Convenor), Quentin Bryce, Magdeline Fadjar, the Hon. Justice Nahum Mushin and Serena Beresford-Wylie of the NADRAC Secretariat.

3.23 At the end of the reporting period, members of the Committee were David Bryson (Convenor), Laurence Boulle, Susan Gribben and Mandy Doherty of the NADRAC Secretariat. Kerrie Tim and John Steele joined the Committee upon their appointment to the Council.

#### *Small Business Committee*

3.24 The Small Business Committee's terms of reference (Appendix A) require it to advise on the need for programs to advance small business awareness of the availability, benefits and types of alternative dispute resolution and advise on Government and non-Government initiatives relevant to the advancement of small business awareness.

3.25 Accordingly, the Committee considered two Government initiatives; the Department of Workplace Relations and Small Business kit "Resolving Small Business Disputes: Six Steps to Successful Resolution" and the Benchmarks for Dispute Avoidance and Resolution prepared by a Roundtable convened by the Australian Competition and Consumer Commission (ACCC).

3.26 NADRAC met with Mediate Today Inc, the consultants engaged by the Office of Small Business to develop an information kit on ADR for small business, on 11 February 1998, and provided comments on the development, distribution and promotion of the kit. The kit was released in June 1998.

3.27 The Council provided written comments and advice to the ACCC in relation to the development of the Benchmarks, and their promotion and distribution amongst the business, legal and ADR communities. The Benchmarks were released by the ACCC in October 1997.

3.28 NADRAC's Secretariat continued to attend the ACCC's Round Table meetings on Small and Large Business Disputes, in the role of independent observer. A meeting was attended in May 1998.

3.29 The Council also provided comment on the dispute resolution provisions, contained in the draft Franchising Code of Conduct, in April 1998.

3.30 In May 1998, the Council considered the future direction of the Small Business Committee. It was decided that in the light of the number of initiatives being undertaken by stakeholders in the small business arena and in order to avoid duplication, the Committee would revert to an ad hoc Committee and respond to these initiatives, as required.

3.31 Members of the Committee were Oscar Shub (Convenor), Quentin Bryce, Jennifer David, Wendy Faulkes and Margaret Harrison-Smith of the NADRAC Secretariat. This Committee held two teleconferences on 26 August and 28 August 1997. As part of the last teleconference, the Committee spoke with John Martin, Executive Director, and Therese Charles, Senior Adviser, Policy and Business Affairs, of the Australian Chamber of Commerce and Industry.

3.32 At the end of the reporting period, members of the ad hoc Small Business Committee were Barbara Filipowski (Convenor), Laurence Boule, Susan Gribben and Mandy Doherty of the NADRAC Secretariat. Warwick Soden and John Steele joined the Committee on their appointment to the Council.

### **Ad hoc committees**

3.33 In addition to its substantive committees, two ad hoc committees, the ad hoc Primary Dispute Resolution Services Committee and the ad hoc Standards Australia Committee, were established.

#### *Ad hoc Primary Dispute Resolution Services Committee*

3.34 The Primary Dispute Resolution Services Committee was convened in September 1997 in order to respond to the Attorney-General's Department Discussion Paper "Primary Dispute Resolution Services in Family Law".

3.35 During the reporting period, there were 3 meetings of the Committee. The meetings were held on 26 September 1997, 31 October 1997 and 1 December 1997. A teleconference was held on 5 September 1997. A comprehensive submission was submitted in late December 1997. It included recommendations that research be undertaken to determine the appropriateness of the present framework for the provision of family and judicial services in the resolution of family disputes, the manner in which those services meet client needs and the way in which the use of these services impact upon public expenditure.

3.36 Members of the Committee were Professor Hilary Astor (Convenor), Wendy Faulkes, Susan Gribben, Richard Moss, the Hon. Justice Nahum Mushin, Philip Theobald, and Serena Beresford-Wylie of the NADRAC Secretariat.

### *Ad hoc Standards Australia Committee*

3.37 In June 1997 NADRAC was asked by the Standards Association of Australia to nominate two representatives to participate in the development of an Australian Standard - 'Guide for the Prevention and Resolution of Disputes'. Having regard to the Council's role of providing independent advice to the Attorney-General, the Council considered it inappropriate to accept membership of the Committee developing the Standard. However, NADRAC welcomed the opportunity for NADRAC to be consulted as the Standard was developed and to attend Committee meetings as an observer.

3.38 Unfortunately, the Council was unable to send an observer due to budgetary constraints. However, the Council has provided comments on the drafts of the Standard and it is expected that it will continue to do so.

3.39 At the May 1998 meeting of the Council it was decided to establish an ad hoc Standards Australia Committee to respond to the final draft of the Standard which is expected to be made available for public comment in November 1998.

3.40 Members of the ad hoc Committee were Bernadette Rogers (Convenor), Laurence Boule and David Bryson.

### **Other ad hoc Work**

3.41 Other NADRAC work during the reporting period included the provision of comments on the Australian Law Reform Commission Issue Paper 20 "Rethinking the federal civil litigation system". The Council provided some initial views on the complex questions of whether judges or judicial officers should persuade disputants to use ADR, whether ADR should be compelled in the federal jurisdiction, the role of the judiciary in providing ADR, the role of immunity for ADR practitioners, and confidentiality and inadmissibility. It is expected that the views expressed will be clarified and refined in the Council's response to the ALRC Issues Paper 25 "ADR - its role in federal dispute resolution".

3.42 At the June 1997 Council meeting, some concern had been expressed at the lack of consolidated information about Australian ADR services currently available in neighbouring Asian and Pacific countries. In light of this, the Council decided that it should consider what role, if any, NADRAC might have in the development of a booklet for the Asian and Pacific market containing information about Australian ADR expertise.

3.43 A paper was presented on this subject by the NADRAC Secretariat at the October 1997 Council meeting. After consideration, the Council decided that the Chairperson of NADRAC should approach the Chairperson of the International Legal Services Advisory Council (ILSAC) to discuss whether this project fell into ILSAC's Charter.

## **4. COUNCIL PROCEDURE**

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4.1 The Council operates in accordance with the following procedures.

### **Mode of Decision Making**

4.2 Council proceeds by way of consensus, and votes only where necessary. The expression of diversities of opinion is valued by Council.

### **Recording of Meetings**

4.3 All Council meetings and some Committee meetings are recorded electronically.

### **Council Records**

4.4 A record is kept of each Council meeting and each Committee meeting.

4.5 Minutes of Council meetings are prepared by the Secretariat and circulated to members within ten working days of each meeting. The minutes contain the decisions of Council; a brief summary of the major issues; and an action column, specifying the nature of tasks, who is to take action and the date for the completion of the task. Decisions for immediate action are recorded at Council meetings and circulated at the meeting.

4.6 The Council maintains an up to date register of formal recommendations made to the Attorney-General and the outcome of those recommendations.

### **Confidentiality**

4.7 The Council felt that it was appropriate to develop some procedures relating to confidentiality as it expects that, from time to time, the Council will have access to confidential information. In addition, the members of Council felt that, as they were appointed to Council as individuals not as representatives of any organisations, they should be free to contribute to Council decisions as they felt appropriate without fear that any personal views they expressed would be made public without their knowledge and approval. Accordingly, the Council decided upon the following procedures:

- No information communicated to people outside the Council will attribute any particular view to any particular Council member without the agreement of the member concerned;
- The Council will decide if any particular matter is sensitive and Council wishes confidentiality to attach to that matter;

- Subject to the above, each member of Council is required to use his or her discretion in discussing the issues considered by Council;
- Except for material in the public domain Council papers will not be circulated outside Council without a prior decision of Council; and
- Before Council publishes any of its decisions it will consult with the Office of the Attorney-General.

4.8 However, Council specifically recognised the need to communicate as openly and broadly as possible about its work. Accordingly, the Council has decided that the Secretariat and members may make the Council Meeting Agenda available to any individuals or organisations as appropriate.

## **Consultation**

4.9 In performing its functions the Council is required to consult broadly with alternative dispute resolution organisations, service providers and practitioners, courts and tribunals, government, the legal profession, educational institutions, business, industry and consumer groups and community organisations as well as the Family Law Council and Family Services Council, when appropriate.

4.10 During 1997/98, the Council continued to fulfil this requirement by publishing the second edition of its newsletter, 'NADRAC Notes', in July 1997. The newsletter was distributed to all those on the NADRAC mailing list which includes a broad range of individuals and organisations with interests in ADR. Unfortunately, limited resources and the changeover between Councils did not permit the publication of further editions in December 1997 and June 1998.

4.11 It is planned to produce the third edition of the newsletter in November 1998.

4.12 NADRAC's sub-page on the Attorney-Generals Department's web-site home page has proven to be very successful with numerous enquiries from organisations and individuals interested in NADRAC's work. NADRAC's home page address is:

<http://law.gov.au/aghome/advisory/nadrac/nadrac.htm>

4.13 All NADRAC publications have been accommodated on the web-site. To date the site provides access to the Council's ADR Definitions Paper, its Report to the Attorney-General on Part 5 of the Family Law Regulations, the Discussion Paper on Issues of Fairness and Justice and the first two editions of 'NADRAC Notes', as well as the Council's Annual Reports. It is envisaged that future discussion papers, reports and newsletters will also be accommodated on the web-site.

## **Participation in the work of other organisations**

4.14 Having regard to NADRAC's primary role of providing independent advice to the Attorney-General on alternative dispute resolution, it would be inappropriate for

the Council to align itself with the work of other non-Government organisations considering issues of alternative dispute resolution. However, the Council maintains an interest in such work and is willing, as appropriate, to be consulted and to make suggestions and comments on the issues that are under consideration.

## **Papers for Council**

4.15 Papers for Council meetings are prepared by the Secretariat and sent to members seven working days prior to meetings.

## **Urgent matters**

4.16 NADRAC has adopted the following procedures for responding to urgent matters:

1. The Chairperson is immediately advised of any matter which requires urgent consideration.
2. Upon notification of the matter, the Chairperson will either:
  - (i) ask the Secretariat to prepare a draft response for the Chairperson's signature; or
  - (ii) establish an ad hoc committee to consider the request and report back on an appropriate response.
3. Prior to dispatch, if time permits, the Chairperson will clear the draft response with all Council members.
4. If time does not permit this, the Chairperson will endeavour to clear the draft response with those members with a particular expertise or interest in the subject area of the request.
5. A copy of the final response will then be included in the agenda for consideration by the Council at its next meeting.

## **Amendment of Council Decisions**

4.17 Council recognises that from time to time it may be necessary to amend Council decisions to correct inadvertent errors and take account of changing circumstances. Accordingly, the Council has adopted the following guidelines relating to the amendment of Council decisions.

4.18 The Chairperson, or where the Chairperson is not available, the Director of the Secretariat may:

- (i) depart from the decisions of Council where necessary to accord with changed circumstances provided that Council is subsequently informed;

- (ii) edit text drafted at Council meetings as needed to progress effectively the business of Council, provided that the substantive meaning is unchanged.

## **Correspondence**

4.19 Council correspondence is prepared by the Secretariat and signed by the Chairperson, relevant Committee Convenor or, as appropriate, by the Secretariat.

## **5. ADMINISTRATIVE MATTERS**

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### **TRAVEL**

5.1 Members' air travel is arranged by the Council Secretariat and paid out of the Council's operating funds. In general, members fly economy class when travelling involves a flight time of less than 3 hours. Where flight times exceed 3 hours, Council members are entitled to fly business class. Different conditions may apply in relation to any members of the judiciary who are members of Council.

5.2 As the Attorney-General's Department has a contract with Qantas, members are required to travel with Qantas wherever possible. Council members are not entitled to personal use of any frequent flyer points earned when flying on Council business.

### **SITTING FEES**

5.3 Although not holders of public office, the members of NADRAC are paid sitting fees in line with Category 2 Sitting Fees determined by the Remuneration Tribunal for Non-specified Part-Time Holders of Public Office. Members are entitled to be paid the daily sitting fee for attendance at any Council or committee meeting which exceeds 3 hours. Lesser amounts are payable in respect of meetings of less than 3 hours.

5.4 The daily fees as at 30 June 1998 were:

<i>Chairperson:</i>	\$450.00
<i>Member:</i>	\$247.00

### **MEMBERS TRAVELLING ALLOWANCE**

5.5 Members are paid travelling allowances in accordance with the rates specified by the Remuneration Tribunal for Part-Time Holders of Public Office.

### **FINANCIAL RESOURCES**

5.6 NADRAC's allocation for the 1997/98 financial year was \$183,787. This figure comprised \$120,066 for secretariat salaries and \$63,721 for sitting fees and other administrative expenditures.

## NADRAC EXPENDITURE FOR 1997/98

5.7 The Council's expenditure is contained within Program 1 (Sub-Program 1.1 - Legal Practice) of the Department's audited financial statements published in the Department's Annual Report.

5.8 NADRAC's total expenditure for the financial year was \$158,236. The largest item of expenditure was clearly the cost of Secretariat staff salaries. If this item is disregarded, however, the Council's expenditure for the financial year was \$38,170.

5.9 A breakdown of the Council's expenditure for the 1997/98 year is set out in the following table:

**Table 1: NADRAC's Total Expenditure 1997/98**

ITEM	EXPENDITURE
Secretariat staff salaries	\$120,066
Sitting fees	\$11,329
Travel and accommodation	\$17,237
Incidental meeting costs	\$204
Administrative expenses	\$2,425
Printing and publishing	\$6,975
TOTAL:	\$158,236

### Explanatory Note

- Any minor discrepancies in these figures is a result of rounding to the nearest dollar.

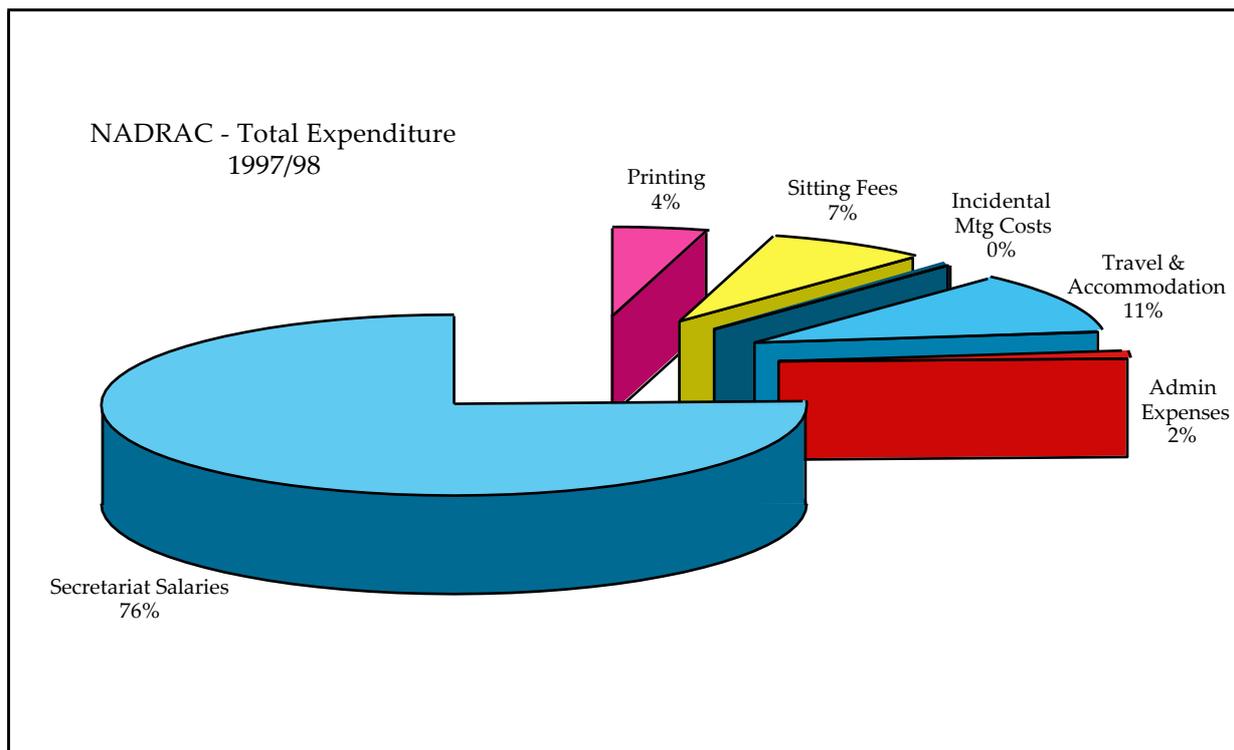
5.10 The Council had \$18,550 remaining in operating funds at the end of the financial year partially due to the transition period between the final meeting of the first Council and the first meeting of the second Council, resulting in the Council meeting twice instead of three times. It is hoped that these remaining funds will be carried forward to the 1998/99 financial year to enable the Council to pursue the postponed projects and assist it to cover an anticipated fall in the Council's allocation for the 1998/99 financial year.

5.11 *Economy measures* There is little room for the Council to further reduce its expenditure. The frequency of both Council and Committee meetings have been reduced to the minimum, in part to save expenditure and in part, due to the transitional period between the First and Second Councils. Teleconferences have been held instead of face to face meetings, reducing both sitting fees and travelling costs. However, teleconferences are not the Council's preferred mode of conducting business. Further economies were achieved by printing only one edition of NADRAC Notes during the year, while other savings were achieved as a result of the delay in publishing Discussion Papers.

5.12 The impact of these economy measures, together with the lapse in Council membership during the financial year, has meant that Council has not been able to achieve all that it had planned for the reporting period. Consequently, the Council's concerns that its productivity might be affected, have been partially realised. However, if the remaining operating funds can be carried forward, the Council should be better placed to pursue delayed projects.

5.13 The most significant expenses for the Council in 1997/98 were Secretariat staff salaries (76% ); travel and accommodation (11% ); and sitting fees (7% ).

**Chart 1: NADRAC's Expenditure 1997/98**



Explanatory Notes

- Sitting Fees - 11 Members of the First Council were entitled to sitting fees. The Second Council has 7 members who are entitled to sitting fees. There were 2 Council meetings and 7 Committee meetings during 1997-98.
- Travel and Accommodation - Covers the cost of airfares, travel allowance, cab charges and car parking.
- Incidental Costs - Covers the charges for catering.
- Administrative Expenses - Covers the cost of book subscriptions, external conferences, purchasing of books, memberships, bank/credit card charges, advertising of positions and other allowances.
- Printing - Covers the cost for printing of Reports, Discussion Papers and Newsletters.

**APPENDIX A**  
**COMMITTEE TERMS OF REFERENCE**

**DIVERSITY COMMITTEE**  
**TERMS OF REFERENCE**

1. The National Alternative Dispute Resolution Advisory Council (NADRAC) is an independent advisory body charged with providing the Attorney-General with coordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.
2. The issues on which NADRAC is required to advise include:
  - minimum standards for the provision of alternative dispute resolution (ADR) services; and
  - the suitability of ADR processes for particular client groups and for particular types of disputes.
3. NADRAC has established a Diversity Committee to consider these issues. Specifically, the Committee will consider the following:
  - areas of difference between client groups which can affect the fairness and justice of ADR procedures and outcomes;
  - factors within particular dispute resolution processes which can affect the fairness, justice and suitability of those processes, for particular client groups and disputes; and
  - appropriate standards for the provision of ADR services in the context of the diversity of client needs and ADR processes.
4. In performing its functions, the Diversity Committee will consult broadly with ADR organisations, service providers and practitioners, courts and tribunals, government, the legal profession, educational institutions, business, industry and consumer groups and community organisations as well as the Family Law Council and the Family Services Council if appropriate.

## **REGISTRATION AND ACCREDITATION COMMITTEE**

### **TERMS OF REFERENCE**

1. The National Alternative Dispute Resolution Advisory Council (NADRAC) is an independent advisory body charged with providing the Attorney-General with co-ordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.
2. The issues on which NADRAC is required to advise include:
  - minimum standards;
  - minimum training and qualification requirements, including the need, if any, for registration and accreditation of practitioners and dispute resolution organisations; and
  - professional disciplinary mechanisms.
3. NADRAC has established a Registration and Accreditation Committee to consider these issues in relation to mediators and mediation organisations. Specifically, the Committee will consider the following:
  - minimum standards;
  - minimum training and qualification requirements;
  - compliance mechanisms;
  - the need for registration;
  - the need for accreditation; and
  - the respective responsibilities of the courts and tribunals, government and/or private and community sector agencies in relation to the above.
4. In performing its functions, the Registration and Accreditation Committee will consult broadly with alternative dispute resolution organisations, service providers and practitioners, courts and tribunals, government, the legal profession, educational institutions, business, industry and consumer groups, and community organisations, as well as the Family Law Council and the Family Services Council, if appropriate.

## **SMALL BUSINESS COMMITTEE**

### **TERMS OF REFERENCE**

1. The National Alternative Dispute Resolution Advisory Council (NADRAC) is charged with the task of providing the Attorney-General with coordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for judicial decision. One of the Council's immediate priorities is to advise the Attorney-General on programs to enhance business awareness and availability of ADR services and programs.
2. In fulfilling its obligations in this regard, the Committee will advise on:
  - the need for programs to advance small business awareness of the availability, benefits and types of alternative dispute resolution, including:
    - the scope of awareness programs initiated in response to this need; and
    - those who should be involved in the provision of awareness programs.
3. The Committee will also consider and advise on Government and non-Government initiatives relevant to the advancement of small business awareness of the availability of ADR services and programs.
4. In performing its functions, the Committee will consult broadly with alternative dispute resolution organisations, service providers and practitioners, government, the legal profession, educational institutions, business, industry and consumer groups.

## **APPENDIX B**

### **SUBMISSIONS TO THE DIVERSITY DISCUSSION PAPER**

Mr Peter Condliffe, Executive Manager, ADR Branch, Qld Department of Justice

Dr Jeff Mann President, Queensland Law Society Inc

Mrs Judith Roberts AM, Chairperson, Family Services Council

Ms Helen Disney, National Director, Relationships Australia

Ms June Williams, Commissioner for Equal Opportunity, Equal Opportunity Commission, WA

Mr R K Heinrich, President, Law Society of NSW

Mr Jim Campbell, Executive Officer, Law Society of the Northern Territory

Professor Alice Tay, President, Human Rights and Equal Opportunity Commission

Mr Robert Goodrick, Assistant General Manager, Legal Branch, Aboriginal and Torres Strait Islander Commission

Mr Jim Simpson, Solicitor and Policy Consultant

Ms Maria Dimopoulos, Chairperson, Association of Non-English speaking Background women of Australia

Mr Colin Neave, Australian Banking Industry Ombudsman

Ms Claire Nairn, Assistant Secretary, Office of the Status of Women, The Department of Prime Minister and Cabinet

Mr Paul Lewis, President, Australian Dispute Resolution Association Inc

Mr John Harley, President, Law Society of South Australia

The Honourable Chief Justice John Phillips, Supreme Court of Victoria

Mr Colin Dickings, Assistant Manager, Technical Services, Insurance Council of Australia Ltd

Ms Dianne Gibson, Executive Director, Family Services Australia Ltd

Mr George Etrelezis, Managing Director, Small Business Development Corporation, WA

Ms Maureen Jewell, Acting Chair, Advisory Council for Disability Services

Associate Professor Kathy Mack, School of Law, Flinders University, SA

Mrs Yvonne Craig

Mr Dany Celermajer, Policy Director, Office of the Aboriginal and Torres Strait  
Islander Social Justice Commissioner

Mrs Judith Roberts, Chairman, Family Services Council