

Annual Report 1998-1999

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COMMITTEE TERMS OF REFERENCE

COUNCIL MEMBERSHIP

The Council when fully constituted, has a complement of ten members. They are appointed by the Attorney-General.

The members of Council from 1 July 1998 to 30 June 1999 were:

Chairperson

Professor Laurence Boule
Professor of Law, Bond University

Members

David Bryson	Conciliation Officer and Manager Quality and Services Victorian WorkCover Conciliation Service
Barbara Filipowski	Secretary and General Counsel Sydney Ports Corporation
Susan Gribben	Executive Director Relationships Australia (Vic)
Associate Professor Kathy Mack	School of Law, Flinders University
Richard Moss	Deputy Secretary Attorney-General's Department
Bernadette Rogers	Director of Alternative Dispute Resolution Queensland Law Society

On 11 August 1998 a further three members were appointed by the Attorney-General for a two year term expiring on 10 August 2000. They were:

Warwick Soden	Registrar Federal Court of Australia Sydney
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

Ms Tim resigned from the Council, due to work commitments, on 28 May 1999.

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



Seated (l to r): Deborah Tyler, Richard Moss, Daryl Williams, Laurence Boule, Sue Pidgeon.

Standing (l to r): Mandy Doherty, Warwick Soden, Kathy Mack, Bernadette Rogers, Susan Gribben, John Steele, David Bryson, Kerrie Tim, Cate Wells, Adele Byrne, Barbara Filipowski.

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.

1. THE YEAR IN REVIEW

1.1 This year has been the first full year of the second Council. The term of office of the first Council expired at the end of 1997. From May 1998, there were six new members of Council, and from August 1998 a further three members were added. Continuity was maintained by the re-appointment of

one member of the previous Council and the ex officio member from the Attorney-General's Department.

1.2 As from 1998 the terms of appointment of members have been staggered to enable the infusion of new ideas while maintaining some continuity for the Council.

1.3 The full complement of the Council is now ten members. However, for the last part of this year, the Council had only nine members. Kerrie Tim, who has experience in indigenous mediation, resigned in May 1999 due to heavy work commitments. The Council would like to express its thanks to Kerrie Tim for her work on the Council, particularly in relation to the diversity paper.

1.4 The Council had three main projects throughout this year. The first is the project on standards for ADR practitioners. This project was commenced by the previous Council but had not been finalised when the members' terms expired. This Council has taken a different approach to the issue than the previous Council. Whereas the previous Council's project was aimed solely at standards for mediators, this Council has decided to take a broader view and deal with standards for all practitioners of alternative dispute resolution (ADR). The project has therefore been much broader in scope and occupied Council members for much of this year. A discussion paper is expected in the second half of 1999.

1.5 The second major project was the finalisation of the previous Council's discussion paper on *Issues of Fairness and Justice in Alternative Dispute Resolution*. The submissions received in response to the discussion paper were supportive of its proposals. The Council took the view that the discussion paper itself was a comprehensive document and therefore a final report would not be appropriate. Rather the Council decided to prepare a practical guide for ADR users and practitioners, based on the proposals contained in the discussion paper. As at 30 June 1999 the guide, called 'A Fair Say' was in the process of being printed.

1.6 The third major project was a reference given to the Council by the Attorney-General to advise him on the incorporation of ADR into the proposed Federal Magistrates Service. This reference was given to the Council in two parts. The first part was to report by 30 March 1999 on the incorporation of ADR into the legislation which creates the federal magistracy. The Council presented this part of the report to the Attorney-General on 29 March 1999. The second part relates to the incorporation of ADR into the rules and regulations of the federal magistracy.

1.7 In addition the Council has been undertaking a joint project with the Family Law Council on the operation of parenting plans under the *Family Law Act 1975* (Cth). This project is a reference from the Attorney-General and is ongoing as at 30 June 1999.

1.8 The Council's views have also been sought on a number of other initiatives involving ADR including the review being conducted by the Attorney-General's Department into access by small business to the legal system. In addition it has made

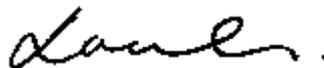
submissions to the issues paper released by the Australian Law Reform Commission on the role of ADR in federal dispute resolution and to the issues paper released by the Minister for Employment, Workplace Relations and Small Business, the Hon Peter Reith MP, on the use of mediation in relation to workplace relations disputes.

1.9 The Council has achieved these outcomes despite fluctuations in the secretariat support available to the Council this year. Both the policy/research and administrative support for the Council has been in a state of continual flux throughout most of this year. In addition, the structure of the secretariat has been altered to enable more funds to be available to the Council to pursue its projects.

1.10 New members of the Council have brought a diversity of expertise to bear on the Council's advice to the Attorney-General. This diversity of membership has proved invaluable to the Council during this reporting year.

1.11 While there are some national ADR organisations, the Council has noticed that there is a desire by some members of the ADR industry for representative leadership on a national scale. The Council's role is to provide advice to the Commonwealth Attorney-General on ADR. However, this role is often not well understood by the ADR industry. Council's views are often welcomed by the ADR industry as providing the desired leadership for the ADR industry because of the Council's diverse (and non-partisan) membership.

1.12 The Council welcomes the opportunity to make a useful contribution to the quality of ADR service in this country but emphasises that it is a policy advisory body which reports to the Attorney-General. During 1998/99 the Council hopes that the work it has undertaken this year has assisted the Attorney-General and thereby promoted the use of quality ADR.



Laurence Boulle
Chairperson

2. STRUCTURE OF COUNCIL

Background

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

2.2 NADRAC's role is to provide the Commonwealth 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.

Council Membership

2.3 NADRAC members are appointed for their personal expertise in ADR and related matters, not as the representatives of any particular organisations or interest groups. 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.

2.4 To encourage the provision of balanced policy advice, NADRAC's membership reflects a variety of ADR backgrounds. As a result, the Council currently includes members with expertise in the conduct of family dispute resolution, community mediation, industrial conciliation and commercial mediation, 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.

2.5 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. While the complement of the original Council was fourteen members, the current Council is limited to ten members.

2.6 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.

2.7 Seven members were appointed as at 1 July 1998. Most of these members of 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.

2.8 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. Details of the membership of the Council during the reporting period are set out on page i of this Report.

2.9 During this financial year, one member, Ms Kerrie Tim, resigned due to work commitments. A replacement has not yet been appointed.

NADRAC Secretariat

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

Australia for providing the premises for its meetings in Canberra, Melbourne and Sydney respectively.

Guests at Council Meetings

3.4 At its Canberra meeting the Council was fortunate to be addressed by the Attorney-General. The Council is aware that the Attorney-General has a busy schedule and is grateful to him for making time to meet with Council members. The Attorney-General welcomed the newly appointed Council members and expressed his strong interest in ADR. He indicated that the areas of primary dispute resolution in family law, standards for ADR practitioners and small business access to justice were areas in which he saw the Council playing an important role.

3.5 David Roberts, the Director of the Small Business Review Team in the Attorney-General's Department also addressed the Council. He spoke on the background to the review and the expected process which included a consultation paper, focus groups, an issues paper and collection of quantitative data. Council's views were sought on the issues paper and the proposals raised in it.

3.6 In October 1999 the Council was addressed at its Melbourne meeting by the Hon Michael Black AC, Chief Justice of the Federal Court of Australia. Chief Justice Black has encouraged the continued development of assisted dispute resolution within the Federal Court. The Chief Justice informed the Council about the operation of ADR within the Federal Court.

3.7 The Council was also addressed at its Melbourne meeting by Ms Nerida Wallace who is a legal consultant and mediator. She spoke to the Council about a recent publication entitled *Towards Common Ground* which she co-authored with David Bryson and Marg O'Donnell. The publication was aimed at helping rural communities involved in native title disputes to reach common ground.

3.8 In February 1999 the Council met in Sydney and was addressed by Ms Janine Ward, Mr David Roberts and Mr Paul Lewis. Ms Janine Ward is a principal legal officer within the Attorney-General's Department. She addressed the Council on the Government's proposals for a Federal Magistrates Service. Mr David Roberts, who addressed the Council in August 1998, again spoke to the Council about the Small Business Review. He briefed members on the current status of the review and sought the Council's input on the draft proposals.

3.9 Mr Paul Lewis is a member and past president of the Australian Dispute Resolution Association. He spoke about the cost of justice, compulsory ADR and the use of ADR by different cultures in Australia.

3.10 At its June 1999 meeting the Council was addressed by the Hon Justice Moynihan, Ms Sue Pidgeon and Mr Damien Negus. Justice Moynihan is the Senior Judge Administrator of the Supreme Court of Queensland. He spoke to the Council about the Uniform Civil Procedure Rules and streamlining the

processes in the Supreme Court. Ms Sue Pidgeon spoke to the Council about the recommendations made by the Council in its advice to the Attorney-General on the incorporation of ADR into the Federal Magistrates Service.

3.11 Mr Damien Negus is the founding chairperson of the Alternative Dispute Resolution Association of Queensland. He spoke to the Council about standards for mediators.

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

3.13 The Council also took the opportunity to meet informally with members of the ADR Committee of the Law Society of New South Wales in Sydney, and with members of the ADR Committee of the Queensland Law Society and the Queensland Bar Association in Brisbane.

3.14 In order to keep abreast of the direction of Government ADR policy and to enhance the Attorney-General's Department's function of developing and implementing Government ADR policy, the Departmental officer responsible for ADR policy, the Assistant Secretary of the Civil Justice Branch of the Department, attends Council meetings in the capacity of observer when the Council sits in Canberra.

Committees

3.15 During the 1998/99 financial year, the Council maintained four substantive committees: the Diversity Committee, the Standards Committee, the Magistracy Committee and the Small Business Committee. Copies of the Terms of Reference for each of these Committees are at Appendix A.

3.16 The Council also commenced setting up a Research Committee, participated in a Joint Committee on Parenting Plans with the Family Law Council, and formed an Australian Law Reform Commission (ALRC) Committee to consider the Issues Paper released by the ALRC, '*ADR - its role in federal dispute resolution*'.

Diversity Committee

3.17 During the reporting period, the Committee continued work on developing the draft Discussion Paper into a final document. The Discussion Paper "Issues of Fairness and Justice in Alternative Dispute Resolution" was issued in November 1997 by the previous Council.

3.18 The Discussion Paper dealt with the potential barriers to fairness and justice in mediation and conciliation for some user groups due to aspects relating to gender, minority cultural groups in Australian Society, age, people with disabilities, minority sexual preferences, rural and remote communities, and socio-economic power differences. It also included recommendations for policy makers and guidelines for practitioners.

3.19 As submissions in response to the Discussion Paper were generally supportive of the issues canvassed and the

Discussion Paper itself was considered comprehensive, it was decided to prepare a short, practical guide for users of mediation and conciliation based on the proposals in the Discussion Paper.

3.20 Members of the Diversity Committee were Barbara Filipowski (Convenor), Richard Moss and Bernadette Rogers. Kerrie Tim joined the Committee upon her appointment to the Council in August 1998 until her resignation in May 1999.

3.21 The Committee met only once throughout the year, in Canberra in August 1998 following the Council meeting. It also held telephone conferences on 15 September 1998 and 27 January 1999.

3.22 A draft practical guide was presented to Council at its February 1999 meeting. The Attorney-General agreed to provide a foreword to the guide and at the end of this reporting year the guide, to be called *A Fair Say*, was about to be printed.

Standards Committee

3.23 The previous Council had set up a Registration and Accreditation Committee to consider the registration and accreditation of mediators.

3.24 The second Council considered the issue at its meeting in August 1998 and decided to expand the project from accreditation of mediators to standards for all ADR practitioners. The expanded project is therefore more wide-ranging and comprehensive. It is also a very contentious issue for the ADR industry. It has therefore taken the Council some time to finalise its thinking on this issue and a discussion paper is planned before the end of the 1999 calendar year.

3.25 During the reporting period face to face meetings of the Standards Committee were held on 22 July 1998, 15 October 1998 (following the Council meeting), 8 December 1998, 2 February 1999, 18 March 1999, 4 May 1999 and 20 May 1999 in Melbourne at the premises of the Workcover Conciliation Service. The Council would like to express its appreciation to the Workcover Conciliation Service for the use of its premises. The Committee also held teleconferences on 23 November 1998 and 3 March 1999. A video conference was held on 24 September 1998 through the auspices of the Federal Court of Australia. The Council wishes to express its appreciation to the Federal Court for the use of its premises and equipment.

3.26 Members of the Committee were David Bryson (Convenor), Laurence Boule and Susan Gribben. Kerrie Tim and John Steele joined the Committee upon their appointment to the Council in August 1998. Kerrie Tim's membership of the Committee ceased on her resignation from Council in May 1999.

Small Business Committee

3.27 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.

3.28 Accordingly, the Committee considered the Suggestions Paper on access to the legal system by small business released in December 1998 by the Small Business Review Team of the Attorney-General's Department.

3.29 The Committee supported a proposed information and brokerage service on the basis that it was independent and its advisers were adequately trained to assess the appropriateness of a dispute for a particular method of dispute resolution. It also supported the increased screening of cases at the point of entry to the courts as long as regard is had to the nature of the dispute, the parties and the type of resolution being sought.

3.30 However, it had reservations about the use of computer assisted options for dispute resolution. Many disputes do not lend themselves to this type of classification system. Assessing the most appropriate type of dispute resolution method can realistically only be assessed by a person with expertise in the area.

3.31 As at 30 June 1999 the Small Business Review Team was drafting its final report to the Attorney-General.

3.32 The Small Business Committee held meetings by teleconference on 27 January 1999 and 3 February 1999.

3.33 The Small Business Committee also held a teleconference with the then Small Business Commissioner of the Australian Competition and Consumer Commission, Mr David Lieberman, on 28 July 1998 to discuss the role of ADR in relation to small business.

3.34 Members of the Small Business Committee were Barbara Filipowski (Convenor) and Laurence Boulle. Warwick Soden and John Steele joined the Committee on their appointment to the Council in August 1998.

Magistracy Committee

3.35 At its meeting in October 1998, the Council considered that it could undertake an appropriate role in relation to ADR procedures for a proposed federal magistracy.

3.36 On 8 December 1998 the Attorney-General announced that Cabinet had approved in principle the creation of a federal magistracy. It was considered desirable for the Council to be given a specific reference with a limited timeframe for advice on incorporating ADR into the structure, process and methodology of the federal magistracy.

3.37 The terms of reference were settled with the Magistracy Committee and, in January 1999, were approved by the Attorney-General. A copy of the terms of reference is at Appendix A.

3.38 The Magistracy Committee held teleconferences on 20 January 1999 and 16 March 1999. A face to face meeting was held in Sydney, before the Council meeting, on 17 February 1999.

3.39 The terms of reference were in two stages. They required the Council to report to the Attorney-General, firstly, by 31 March 1999 on those matters relating to ADR which might need to be incorporated in legislation which creates the federal magistracy. This first part of the report was provided to the Attorney-General on 29 March 1999 and can be found on the Council's website. The second part of the reference involves advising on the incorporation of ADR into the rules and regulations for the federal magistracy. The second part of the reference was due by 30 June 1999 but an extension of time was sought on the basis that the final form of the legislation will not be known until the Parliament considers the draft bills later in 1999.

3.40 The members of the Magistracy Committee were Kathy Mack (convenor), David Bryson, Bernadette Rogers, Warwick Soden and Richard Moss.

Joint Committee on Parenting Plans

3.41 At its October 1998 meeting, the Council agreed to participate in a joint project with the Family Law Council on the use of parenting plans under the *Family Law Act 1975* (Cth). The Attorney-General has requested that this issue be examined by the Family Law Council and NADRAC.

3.42 Parenting plans are agreements between separating parents about responsibility for the many aspects of caring for their children. They were intended to be flexible agreements and capable of easy alteration. The proposals for parenting plans were implemented in the 1995 reforms to the *Family Law Act 1975* (Cth). The amendments gave parents the option of registering their parenting plans. This had the effect of bringing them under court control which made alteration formal, costly and complex. This was contrary to the objective of having co-operative parenting plans.

3.43 The NADRAC representatives on the Committee were originally Kathy Mack and Susan Gribben. Bernadette Rogers replaced Kathy Mack on the Committee during the year.

3.44 During the year the Joint Committee had one teleconference on 20 January 1999. At the end of the reporting period the Joint Committee was still considering its report.

Research Committee

3.45 At its meeting in August 1998 the Council decided to organise a Committee to fulfil its Charter obligation of advising on the need for data collection and research concerning alternative dispute resolution and the cost-effective methods of meeting that need.

3.46 The Committee commenced consideration of a project involving identifying the data that is being collected on ADR in the federal arena. However, it was discovered that the use of ADR by federal agencies is so ad hoc and there is so little information available about its use that the project would not be feasible in that form.

3.47 At its June 1999 meeting the Council agreed to the Committee's suggestion to re-focus the research project on highlighting areas in relation to ADR that require further investigation with a view to stimulating research in those areas.

3.48 Members of the Committee were John Steele (convenor), David Bryson, and Kathy Mack. The Committee held a teleconference on 11 September 1998.

Australian Law Reform Commission Committee

3.49 In June 1998, the Australian Law Reform Commission (ALRC) released Issues Paper No 25 entitled *ADR - its role in federal dispute resolution*.

3.50 The ALRC Committee prepared a response to the issues paper, which was provided to the ALRC on 29 September 1998.

3.51 The breadth of the issues paper was such that the Committee targeted its response to the issues which were relevant to the Council. The response therefore addressed issues such as the assessment of suitability of different ADR processes for different disputants and disputes, the identification of circumstances when ADR should not be used or should be used only with careful safeguards, mandatory referral, costs and funding, the inappropriateness of judges acting as ADR third parties, liability and immunity for ADR practitioners and reporting to the court and confidentiality.

3.52 The Committee met in person on 12 August 1998, prior to a Council meeting.

3.53 Members of the Committee were Kathy Mack (Convenor), Bernadette Rogers, Warwick Soden and Richard Moss.

Standards Australia Committee

3.54 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.

3.55 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.

3.56 At the October 1998 meeting of the Council it was decided that the Standards Australia Committee would disband until the Council requests the Committee's consideration of future work undertaken by Standards Australia in relation to ADR.

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

Other ad hoc Work

Workplace Relations and Mediation

3.58 In late November 1998 the Council Secretariat received a copy of the Discussion Paper circulated by the Hon Peter Reith MP, the then Minister for Workplace Relations and Small Business, in August 1998. It was entitled '*Approaches to dispute resolution: a role for mediation?*'. The paper canvassed ways of using mediation as an ADR mechanism in workplace relations.

3.59 NADRAC responded to the discussion paper in January 1999. It supported the use of mediation as a means of resolving workplace relations disputes and considered that most such disputes would be amenable to being mediated, especially those which required the parties to work together in the future.

3.60 In May 1999 the Minister for Employment, Workplace Relations and Small Business issued an Implementation Discussion Paper called *The continuing reform of workplace relations: Implementation of More Jobs, Better Pay*. That paper set out how the Government intended to implement mediation in the area of workplace relations, among other initiatives in the area.

Western Australia Law Reform Commission Review

3.61 In 1998 the Law Reform Commission of Western Australia undertook a review of the West Australian civil and criminal justice system. The Council made a submission to one of the consultation papers prepared by the Commission, *The use of court-based or community alternative dispute resolution schemes and alternative forums for adjudication*.

3.62 The Council was pleased to note the use of the definitions from its report *Alternative Dispute Resolution Definitions* in the consultation paper. Consistency in the description of ADR processes can facilitate increased acceptance of ADR as a means of resolving disputes.

Victoria Law Foundation ADR Consumer Guide

3.63 The Council was requested by the Victoria Law Foundation to participate in a Reference Group which was developing an ADR Consumer Guide. The Council declined to be a member of the Reference Group on the basis that it was

an independent advisory body which made its decisions by consensus. However, the Council has provided feedback on drafts of the Guide to the Reference Group.

4. COUNCIL PROCEDURE

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 1998/99, the Council continued to fulfil this requirement by publishing the third edition of its newsletter, 'NADRAC Notes', in November 1998. 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 did not permit the publication of a further edition in May 1999 as planned.

4.11 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://www.nadrac.gov.au/>

4.12 All NADRAC publications have been accommodated on the web-site. At the end of the reporting period this included 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 editions of 'NADRAC Notes', as well as the Council's Annual Reports. Submissions to the Discussion Paper on Fairness and Justice have also been included, as has the first part of a report to the Attorney-General on the incorporation of ADR into the proposed Federal Magistrates Court. 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

4.13 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

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

Urgent matters

4.15 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

4.16 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.

4.17 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

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

5. ADMINISTRATIVE MATTERS

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, members of NADRAC, with the exception of the ex officio member, 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 1999 were:

Chairperson: \$ 450:00
Member: \$ 250:00

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 1998/99 financial year was \$ 268,228:00 This figure comprised \$ 162,000:00 for secretariat salaries and \$ 106,228:00 for sitting fees and other administrative expenditures.

NADRAC EXPENDITURE FOR 1998/99

5.7 The Council's expenditure is contained within Program 1 - Legal and Policy Services to the Commonwealth - (Sub-

Program 1.2 - Civil Law Division) of the Department's audited financial statements published in the Department's Annual Report.

5.8 NADRAC's total expenditure for the financial year in round figures was \$ 141,906. The largest item of expenditure was the cost of Secretariat staff salaries. If this item is disregarded, however, the Council's expenditure for the financial year was \$ 53, 878:00.

5.9 A breakdown of the Council's expenditure for the 1998/99 year is set out in the following table:

Table 1: NADRAC's Total Expenditure 1998/99

ITEM	Expenditure
Secretariat staff salaries	\$88, 028
Sitting fees	\$19,240
Travel and accommodation	\$26,274
Incidental meeting costs	\$404
Administrative expenses	\$3,089
Printing and publishing	\$2,371
Funds transfer	\$2, 500
TOTAL:	\$141,906

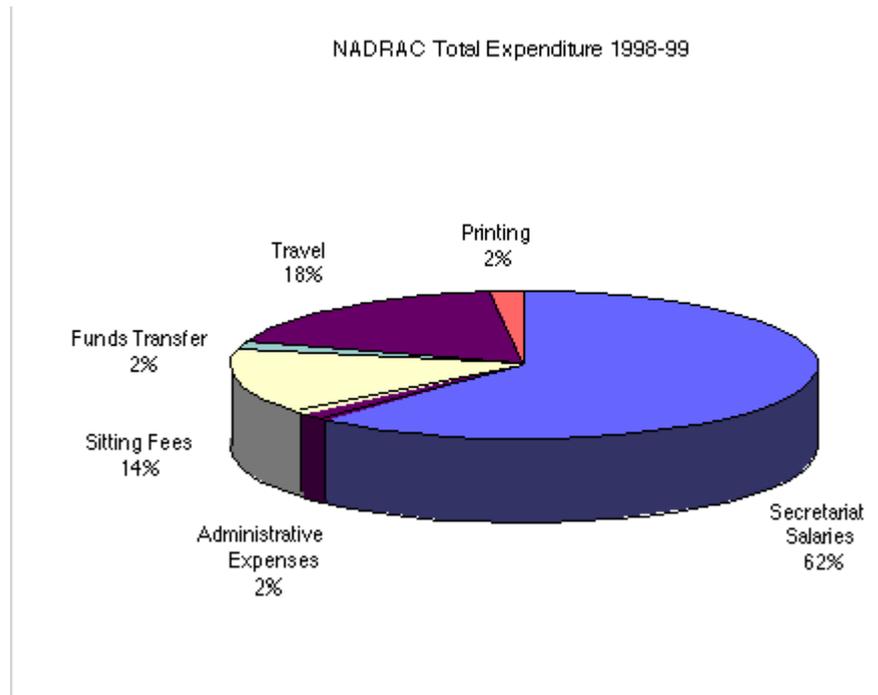
Explanatory Note

- Any minor discrepancies in these figures is a result of rounding to the nearest dollar.
- Funds transfer refers to an amount transferred to another allocation to reimburse amount paid for airfares on NADRAC's behalf.

5.10 The Council had \$ 126, 322 remaining in operating funds at the end of the financial year. Of this, \$ 73, 972 related to unspent salary allocation and \$ 52,350 related to unspent administrative funds and sitting fees allocation. This underspend was due to several factors including delays in printing reports into the next financial year, three Council members commencing part way through the year, the loss of one Council member during the year and the Secretariat not being fully staffed throughout the year. It is hoped that these remaining funds will be carried forward to the 1999/2000 financial year.

5.11 The most significant expenses for the Council in 1998/99 were Secretariat staff salaries (62%); travel and accommodation (19%); and sitting fees (14%).

Chart 1: NADRAC's Expenditure 1998/99



Explanatory Notes

- Sitting Fees - The Council has 7 members who are entitled to sitting fees. There were 4 Council meetings and 9 Committee meetings during 1998-99.
- 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.

STANDARDS COMMITTEE

TERMS OF REFERENCE

1. NADRAC's Charter relevantly requires it to advise the Attorney-General on:

- 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; and
- appropriate professional disciplinary mechanisms.

2. The Charter also requires NADRAC to examine the following issues when considering the issue of minimum standards:

- 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.

3. NADRAC has established a Standards Committee to consider the issue of standards for the provision of alternative dispute resolution services.

4. NADRAC recognises that alternative dispute resolution services involve the use of a broad range of processes which can be categorised as facilitative, advisory and determinative. The provision of ADR services also occurs in a range of contexts. The standards required of ADR services will vary according to the process used and its context.

5. The Committee will prepare a report outlining a framework within which minimum standards for the provision of ADR services can be developed.

6. The report will draw upon examples of best practice standards from Australia and overseas.

7. The report will also outline options for ensuring compliance with minimum standards of practice.

8. The Committee will prepare a discussion paper for the Council by June 1999 for public distribution in August 1999. A final report will be provided to the Attorney-General by April 2000.

October 1998

FEDERAL MAGISTRATES COMMITTEE

TERMS OF REFERENCE

ALTERNATIVE DISPUTE RESOLUTION IN THE FEDERAL MAGISTRACY

I, DARYL WILLIAMS AC QC MP, Attorney-General for the Commonwealth of Australia, having regard to the:

- decision to establish a federal magistracy;
- benefits of alternative dispute resolution (ADR) in resolving disputes;
- desirability of incorporating ADR procedures into the federal magistracy from its inception;
- desirability of introducing legislation to create the federal magistracy in the Autumn 1999 Parliamentary sittings; and
- existing legislative provisions and practices for ADR in the Family Court of Australia and the Federal Court of Australia:

1. refer to the National Alternative Dispute Resolution Advisory Council (the Council) for inquiry and report by 31 March 1999 on which, if any, issues arising from the following matters should be addressed in legislative provisions that will be necessary to establish the use of ADR in the federal magistracy:

- a. the type of ADR processes that should be used in the federal magistracy;
- b. who should provide ADR processes used in the federal magistracy (including training and standards for those involved in various dispute resolution methods);
- c. processes for deciding which disputes should go to which ADR processes and at what stage in proceedings;

- d. the extent to which participation in an ADR process should be compelled, including sanctions for not complying with an ADR referral;
- e. methods of evaluating the effectiveness of the magistracy's ADR services; and
- f. any related matter.

2. request the Council to advise upon issues arising from points 1(a) -(f) above in respect of subordinate legislation or practice guidelines for the federal magistracy by 30 June 1999.

In undertaking this reference the Council shall consult widely as appropriate given the required time frame.

Dated 8 January 1999

Daryl Williams

Attorney-General

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:

- o the scope of awareness programs initiated in response to this need; and
- o 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.