

**National Alternative Dispute Resolution Advisory Council**

# **Annual Report 2000-2001**

Canberra

© Commonwealth of Australia

This work is copyright. It may be reproduced in whole or in part subject to the inclusion of and acknowledgment of the source and no commercial interest. Reproduction for purposes other than those indicated above requires the written permission of the Commonwealth available through AusInfo.

Requests and inquiries should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1902, Canberra, ACT 2601.

ISBN 0 642 21024 1

# Contents

---

<b>YEAR IN REVIEW</b>	<b>1</b>
<b>1. ABOUT NADRAC</b>	<b>1</b>
1.1 Establishment	1
1.2 Charter	1
1.3 Members during 2000/2001	3
1.4 Past members	4
1.5 Nature of membership	4
1.6 Secretariat	5
<b>2. GENERAL ACTIVITIES</b>	<b>6</b>
2.1 Meetings	6
2.2 Consultation and communication	6
<b>3. PROJECTS AND COMMITTEES</b>	<b>8</b>
3.1 Overview	8
3.2 Standards for ADR	9
3.3 Criteria for ADR	12
3.4 Court ADR	14
3.5 ADR Definitions	15
3.6 Research, evaluation and data collection	16
3.7 On-line ADR	16
<b>4. FINANCIAL REPORT</b>	<b>18</b>
<b>5. REPORT AGAINST WORK PLAN</b>	<b>19</b>
5.1 Planning process	19
5.2 Challenges and priority areas	19
5.3 Action strategies	20
<b>6. SUMMARY OF NADRAC'S SUBMISSIONS AND PUBLICATIONS</b>	<b>23</b>

## Year in Review

---

- 1 This is the sixth annual report of NADRAC. The past year has seen an integration of the work of council members over the previous five years, as well as new opportunities and challenges. We have welcomed two new members to NADRAC, but the terms of four others have expired.
- 2 The key priorities for NADRAC are promoting the quality of ADR practice, addressing issues of court based ADR, responding to increasing diversity in ADR, and advocating for effective ADR research, evaluation and data collection.
- 3 Our achievements in the past 12 months have gone some way towards addressing these priorities. We have finalised and launched our report on standards for ADR, developed a preliminary list of criteria for court referral of matters to ADR, consolidated general principles for Court ADR, undertaken consultation in relation to ADR definitions, undertaken a preliminary work in considering on-line ADR, and held discussions with key agencies to promote improved ADR research and data collection. These activities are detailed in later sections of this report.
- 4 Two principles, which were outlined in NADRAC's report on ADR standards, summarise the considerations in much of our work. The first principle is recognition of the diverse contexts in which ADR is practised (the diversity principle). The second is the promotion of consistent practice in ADR (the consistency principle). NADRAC's challenge has been to balance these two principle.
- 5 Innovative forms of ADR are being practiced in an increasing range of contexts by diverse service providers. The use of technology, such as on-line communication, is an example of this diversity. While diversity and choice is to be encouraged, the continued development of ADR, and its acceptance by the community requires a degree of consistency.
- 6 Proper assessments should made about referrals to ADR, especially within mandatory settings. NADRAC work of criteria for referral to ADR aims to assist court and other referrers to develop guidelines on the use of ADR.
- 7 When ADR services are used, it is vital that they offer processes of suitable quality. NADRAC report on standards aims to ensure ADR service providers develop standards address that both address essential areas, and take account of the context of service delivery.
- 8 Consistency in terminology on ADR enables consumers to make informed choices decisions about the nature of their participation in ADR. To this end, NADRAC has undertaken a review of its 1997 paper *Alternative Dispute Resolution Definitions*, and has held discussion with the Family Court, Federal Magistrates Service and Attorney-General's Department on the use of terminology for Alternative and Primary Dispute Resolution within the family law system.
- 9 Effective and consistent data collection is necessary is we are to assess the quality of ADR services, the extent of their usage, and the relative effectiveness of different

forms of ADR for different disputes and client groups. The lack of empirical data on ADR is a major hindrance in the development of good policy on ADR. NADRAC's work on ADR research, evaluation and data collection has aimed to encourage relevant bodies to collect such data.

- 10 As NADRAC's work on standards has demonstrated, the development of ADR is a shared responsibility. We are committed to effectively fulfilling NADRAC's primary role, namely to provide high quality advice on ADR to the Commonwealth Attorney-General. At the same time, we are conscious of the fact that progress in ADR requires initiatives from many sectors, including government agencies, industry and professional groups, ADR associations and service providers, ADR practitioners and research and educational bodies.
- 11 NADRAC has therefore placed considerable emphasis on consultation and communication with the ADR field. Prior to its March 2001 meeting in Adelaide, NADRAC organised a public forum to discuss issues and priorities for ADR. As a result of the success of that forum, NADRAC plans to hold similar events in the future.
- 12 Two new members who joined NADRAC in August 2001 bring valuable new experience and perspectives to the council. The Attorney-General appointed Danny Ford, Director, Aboriginal Strategy and Programs, Family and Children's Services, Western Australia. The Attorney also approved Mr Ian Govey, General Manager, Civil Justice and Legal Services, as an ex officio member representing the Attorney-General's Department.
- 13 It is with some sadness that the terms of four other members expired during the past year. David Bryson, Susan Gribben, Kathy Mack and Bernadette Rogers have made exceptional contributions to NADRAC over the past three years, and they will be sorely missed.
- 14 NADRAC looks forward to a new year of opportunities and challenges. It will draw on the wisdom of previous members as it continues both to build consistency and to celebrate diversity in ADR.

Professor Laurence Boulle  
Chair

# 1. About NADRAC

---

## 1.1 Establishment

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*. NADRAC's charter is outlined below.

## 1.2 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

- 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
  - 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, 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.

### 1.3 Members during 2000/2001

Professor Laurence Boulle (Chair)	Professor of Law, Bond University, Queensland
David Bryson	Conciliation Officer and Manager WorkCover Conciliation Service, Victoria
Barbara Filipowski	Secretary and General Counsel Sydney Ports Corporation, NSW
Danny Ford	Director, Aboriginal Strategy and Policy Family and Children's Services, Western Australia
Ian Govey	General Manager, Civil Justice and Legal Services Attorney-General's Department, ACT
Susan Gribben	Private consultant, Victoria
Associate Professor Kathy Mack	School of Law Flinders University, South Australia
Bernadette Rogers	Conference Registrar Administrative Appeals Tribunal, Brisbane
Warwick Soden	Registrar Federal Court of Australia, NSW
John Steele	Training and Development Officer Community Mediation Services, South Australia



**NADRAC members and staff 2000/2001**

(Pictured from left to right)

Standing: Kathy Mack, Warwick Soden,  
David Syme, David Bryson,  
Ian Govey, Bernadette Rogers, John Steele

Sitting: Danielle Windley, Laurence Boulle,  
Susan Gribben, Danny Ford

Inset: Barbara Filipowski

## 1.4 Past members

Professor Hilary Astor (past chair)  
Ms Quentin Bryce AO  
Associate Professor Gay Clarke  
Professor Jennifer David  
Ms Magdeline Fadjar  
Ms Wendy Faulkes  
Mr Richard Moss  
The Hon Justice Nahum Mushin  
Mr Kurt Noble  
Mr Oscar Shub  
Mr Philip Theobald  
Dr Josephine Tiddy  
Dr Gregory Tillett  
Ms Kerrie Tim

## 1.5 Nature of membership

- 1 When fully constituted, NADRAC has a complement of 10 members, appointed by the Attorney-General. The number of members at any one time and the length of their respective terms of appointment is a matter within the Attorney-General's discretion.
- 2 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, 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.
- 3 To encourage the provision of balanced policy advice, NADRAC's membership reflects a variety of ADR backgrounds. Current members have combined expertise in the conduct of family dispute resolution, community mediation, indigenous dispute resolution, administrative dispute resolution, industrial and workplace conciliation, commercial mediation, and court and tribunal ADR processes. Members include educators, academics, managers and practitioners who have made significant contributions to ADR literature, theory, policy and practice. Mr Ian Govey is appointed by virtue of his position within the Attorney-General's Department.
- 4 Mr Ford was appointed by the Attorney-General in August 2000, for a period of 12 months. Mr Ford, is Director of Aboriginal Strategy and Policy, Family and Children's Services, WA, and previously a member of the Family Services Council. He brings valuable experience to NADRAC in relation to indigenous issues.
- 5 The terms of Prof. Boulle, Mr Bryson, Ms Filipowski, Assoc. Prof Mack, and Ms Rogers, who were appointed on 6 April 1998, expired on 5 April 2001. Ms Gribben, whose was re-appointed in August 2000 for a further 12 months, resigned from 1 April 2001 following an overseas posting. Mr Soden and Mr Steel were re-appointed to a further 18 months from August 2000. At the end of the reporting period, the Attorney-General was in the process of considering new appointees and re-appointments to NADRAC.

## 1.6 Secretariat

1 NADRAC is supported by a secretariat located in the Civil Justice Division of the Commonwealth Attorney-General's Department. The functions of the secretariat are:

- To undertake research on ADR issues being considered by the council
- To provide policy advice to the council
- To respond to public, government and other enquires on behalf of the council and represent the council, as required, in a variety of forums
- To draft council and committee reports and discussion papers
- To draft all council and committee correspondence, letters of advice and other material including the council's annual report and its newsletter
- To provide secretarial, administrative and other support services, especially in relation to council and committee meetings including the preparation of agendas and papers for meetings, minute-taking, the organisation of accommodation and travel
- To manage NADRAC's expenditure within the relevant budgetary allocations.

2 Staff of the secretariat during 2000/2001 were:

- Director David Syme
- Legal Project Officer Danielle Windley
- Administrative Assistant Karen Stark (to December 2000)  
Derya Koc (January – February 2001)  
Wendy Christiansen (March – May 2001)  
Belinda Lovell (from May 2001)

3 Contact details for the Secretariat are:

Telephone:	(02) 6250 6897
Fax:	(02) 6250 5911
E-mail:	<a href="mailto:nadrac@ag.gov.au">nadrac@ag.gov.au</a>
Postal Address:	Robert Garran Offices National Circuit BARTON ACT 2600
Web-site	<a href="http://www.nadrac.gov.au">www.nadrac.gov.au</a>

## 2. General activities

---

### 2.1 Meetings

- 1 This financial year NADRAC held meetings in:
  - Melbourne (20 August 2000)
  - Canberra (6–7 December 2000)
  - Adelaide (15–16 March 2001)
  - A fourth meeting was not held due to the expiry in April of the terms of the chair and five members.
- 2 Council acknowledges the assistance of the Commonwealth Attorney-General's Department and the Federal Court of Australia in providing premises for these meetings.

### 2.2 Consultation and communication

- 3 In performing its functions NADRAC 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. NADRAC places a high priority on openness and transparency in its decision making, and disseminates information about its work to those with an interest in ADR.
- 4 NADRAC's consultation and communications strategies include:
  - Inviting individual and agencies to make presentation and discuss issues during council meetings
  - Holding public forums to discuss issues affecting ADR
  - Making presentations at seminars, meeting and conferences
  - Consulting with individual agencies on specific topics
  - Maintaining and developing informal networks through members and staff
  - Preparing and disseminating publications, including and reports, discussion papers and an occasional newsletter (*NADRAC Notes*)
  - Maintaining a web-site, and posting useful information on that site.

### **Guests at council meetings**

- 5 Ms Adele Byrne, Registrar, Federal Magistrates Service, addressed the meeting in August 2000.
- 6 At the December 2000 meeting, council heard from Dr Margaret Browne, First Assistant Secretary, Family Law and Legal Assistance Division in the Attorney-General's Department, and from Captain Helen Marks, Warrant Officer Rob Swanwick and Lieutenant Commander Wendy Dowling in relation the ADR program operating within the Defence Organisation.
- 7 The PDR Coordinator in the Federal Magistrates Service, Ms Susan Cibau, spoke at the March 2001 meeting in Adelaide.
- 8 The council would like to extend its thanks to these guests for their valuable contributions.

### **Forums**

- 9 NADRAC has a keen interest in consulting effectively with those with and interest in ADR. It therefore organised and facilitated a forum in Adelaide on 14 March 2001, to consider with its meeting. Over 40 people attended the forum, which discussed issues affecting ADR, and which will assist NADRAC as it develop its future work plan. As a result of the success of the forum, NADRAC plans to hold similar events in the future.

### **Publications and web-site**

- 10 During the 2000/2001 financial year, NADRAC has produced and disseminated its report, *A Framework for ADR Standards* and an edition of *NADRAC Notes* (February 2001), and continued to distribute copies of previous reports and papers. It has also posted on the web-site a background paper on *On-line ADR*, and information on criteria for ADR.
- 11 NADRAC's web-site has been re-designed to make it more accessible. It continues to be a vital means of communication with both Australia and overseas audiences. In 2000/2001 there were a total of 73,522 hits, and 17,227 visitor sessions. Popular publications downloaded from the site during this period included *The Development of Standards for ADR* (10,509), *A Fair Say* (2,275), *Alternative Dispute Resolution Definitions* (2,046), and *Issues of Fairness and Justice in ADR* (1,545).

## 3. Projects and committees

---

### 3.1 Overview

Most of NADRAC's work is conducted as projects overseen by committees and supported by the secretariat. During 2000/2001, this work concentrated on the following areas, which are described in more detail in the next sections:

#### ***Standards for ADR***

Key activities

- Consideration of outcomes of public consultations on its discussion paper
- Preparation of final report to the Attorney-General
- Release and dissemination of the report

The standards committee comprised:

- David Bryson (Convenor)
- Laurence Boule
- Susan Gribben
- Barbara Filipowski
- John Steele.

#### ***Criteria for ADR***

Key activities

- Continued research into criteria used to assess disputes for different forms of ADR
- Letter of advice to Federal Magistrates Service regarding criteria for court referral to ADR

The criteria committee comprised:

- John Steele (convenor)
- Kathy Mack
- David Bryson
- Susan Gribben.

#### ***ADR in courts and tribunals***

Key activities

- Advice on the proposed Administrative Review Tribunal
- Supplementary advice to the Federal Magistrates Service in relation to Draft Rules
- Consolidation of general principles for Court ADR

The Court ADR committee (Administrative Review Committee) comprised:

- Bernadette Rogers (convenor)
- Kathy Mack
- Warwick Soden
- Ian Govey.

## **ADR definitions**

### Key activities

- Consultations in relation to a review of ADR definitions
- Convening a meeting with Family Court, FEM and Attorney-General's Department regarding use of ADR terminology within the Family Law system

### The definitions committee comprised:

- Warwick Soden (convenor)
- Danny Ford
- Ian Govey
- John Steele.

## **ADR research**

### Key activities

- Representation to relevant agencies on the need for ADR research
- Consultation with Court Administration Working Group and the Family Court of Australia on collection of statistics relevant to ADR

### The research committee comprised:

- John Steele (convenor)
- Kathy Mack
- David Bryson
- Susan Gribben.

## **On-line ADR**

### Key activities

- Commencement of background research
- Preparation of background paper, and receipt of comments on the paper.

## **3.2 Standards for ADR**

- 1 NADRAC's charter includes advice to the Attorney-General on standards for the provision of alternative dispute resolution (ADR), on minimum qualifications for ADR practitioners, including the need for registration and accreditation of ADR practitioners or organisations, and appropriate professional disciplinary mechanisms.
- 2 Following research and consultations on its earlier discussion paper, NADRAC provided a final report to the Attorney-General on ADR standards in April 2001. Its report, *A Framework for ADR Standards*, was launched by the Attorney in Brisbane on 13 June 2001. By the end of June 2001, 1500 copies of the report had been distributed.
- 3 In its report, NADRAC sought to support the diversity of ADR, while ensuring consistency in the quality of ADR service provision. The report proposed a framework for ADR standards comprising guidelines for developing and implementing standards, a requirement for a code of practice which takes account of essential areas and, where applicable, the enforcement of such a code through appropriate means. The report contained 21 recommendations directed to both government and non-government

agencies, and also provides practical guidance for those developing standards for ADR.

### ***Key conclusions***

- 4 In its report NADRAC concluded that there are strong arguments for the development of standards for ADR. Standards are required to enhance the quality of ADR practice, to facilitate consumer education about ADR, to build consumer confidence in ADR services, to improve the credibility of ADR and to build the capacity and coherence of the ADR field.
- 5 While service providers need to develop standards to suit the diverse contexts in which they operate, some essential standards, contained within codes of practice, should apply to all ADR services. Such a code should also include an effective complaints mechanism.
- 6 Compliance with an appropriate code of practice should be based primarily on self-regulation, but the Commonwealth can play a role in ensuring compliance with a code of practice through its own contractual arrangements, and through encouraging other levels of government and statutory organisations to do likewise. NADRAC also noted that particular responsibilities for standards apply in mandatory situations. Clarity on statutory provisions covering ADR is also an area of priority.
- 7 Greater clarity and consistency is required in relation to current accreditation arrangements, and processes for the selection and engagement of ADR practitioners need to be fair and transparent, and based on an assessment of the knowledge skills and ethical requirements of the particular ADR program, service or sector. ADR training and education programs should integrate theory and practice, and take account of the knowledge, skills and ethics described NADRAC's report.
- 8 The feasibility and viability of new ADR peak or complaints bodies need to be explored further, taking into account possible functions, structures, constraints, funding and cost-effectiveness.

### ***Practical Guidelines***

- 9 NADRAC suggested that several key issues need to be considered in developing standards for ADR:
  - the context of service provision
  - the needs to be addressed in developing the standards
  - the appropriateness of existing or comparable standards
  - the roles and responsibilities of the service provider and of practitioners
  - the standards of practice that service providers should adopt
  - the standards that should apply to practitioners

- other considerations to ensure service quality
- review and evaluation of the standards.

10 NADRAC recommended that ADR service providers adopt and comply with a code of practice, which describes:

*Process*

- the ADR process or processes to be covered by the code, including the roles of all participants in the process
- how and when the ADR process may or should be terminated
- the service provider's and practitioners' obligations after the process is concluded

*Informed participation*

- the service provider's and practitioners' obligations to enable parties to make informed choices about the extent and nature of their participation in the process
- the service provider's and practitioners' obligations with respect to advertising and promotion of themselves, their service and the ADR process
- how and when parties will be informed of the standards that apply to the service provider and to practitioners

*Access and fairness*

- the service provider's and practitioners' obligations to determine the appropriateness of the process for the particular dispute and for the parties to the dispute
- the service provider's and practitioners' obligations to ensure the accessibility of the service and the process to parties with diverse needs
- the service provider's and practitioners' obligations to achieve fairness in procedure, including neutrality and impartiality
- the service provider's and practitioners' obligations to maintain confidentiality and to inform the parties of confidentiality requirements

*Service quality*

- the knowledge, skills and ethics required of practitioners

- the service provider's and practitioners' obligations to ensure the quality of the ADR processes

#### *Complaints and compliance*

- the service provider's and practitioners' obligations to handle complaints appropriately
  - the service provider's and practitioners' obligations to comply with the code.
- 11 Following feedback on its discussion paper, NADRAC refined the descriptions of the knowledge, skills and ethics standards for ADR practitioners. These standards need to be adapted to suit the context of service provision and the roles and responsibilities of practitioners.
- Areas of knowledge include knowledge about conflict, culture, negotiation, communication, context, procedures, self, decision-making and ADR.
  - Skills include assessing a dispute for ADR, gathering and using information, defining the dispute, communication, managing the process, managing interaction between the parties, negotiation, being impartial, making a decision and concluding the ADR process.
  - Ethics include promoting services accurately, ensuring effective participation by parties, eliciting information, managing continuation or termination of the process, exhibiting lack of bias, maintaining impartiality, maintaining confidentiality and ensuring appropriate outcomes.

### **3.3 Criteria for ADR**

- 1 NADRAC is required to advise on 'the suitability of alternative dispute resolution processes for particular client groups and for particular types of disputes'.
- 2 In its previous advice on the use of ADR by the Courts, NADRAC has consistently argued that cases need to be properly screened and assessed for referral to ADR. In its advice to the Attorney on the Federal Magistrates Service, NADRAC recommended that guidelines be developed for referral to ADR. The criteria project was designed to assist in the development of such guidelines.
- 3 In 1999/2000, NADRAC conducted a literature review, and sent out letters to 115 agencies, requesting information on the methods and criteria used to determine suitability for ADR.
- 4 These responses were analysed during 2000/2001. It was apparent that criteria for referral are rarely articulated within organisations beyond basic statutory requirements for eligibility. However, a few organisations have developed relatively detailed, thoughtful criteria to determine suitability, mostly in relation to mediation and other facilitative ADR processes.

- 5 Based on these replies, and on the literature on criteria for ADR, NADRAC compiled a list of factors which are relevant considerations in determining the suitability or otherwise of ADR. A letter outlining these criteria was subsequently drafted and sent to the Chief Federal Magistrate in December 2000.
- 6 Some factors may relate to matters of principle, while others concern the likelihood of resolution. Also, these factors do not exist in isolation. They may interact with each other, and operate differently depending on context. Assessment is therefore a complex process which continues through initial screening and referral, intake, first session introductions, management of the process, follow up and termination.
- 7 The list of factors identified were:
- Current fear or high risk of violence by or to a party
  - Allegations of child abuse
  - An unmanaged mental illness or intellectual disability without appropriate advocacy
  - A clear statement by one party that they will not participate in ADR or that they ‘want their day in court’
  - A statement by the parties that they want to resolve their conflict in a non-adversarial forum
  - Bad faith bargaining, or clear likelihood of this
  - The intention of one party to use the process to harass the other
  - Over riding public interest
  - A matter which is primarily a dispute of fact
  - Parties who have major, non-negotiable value differences
  - The ability of the parties to make an informed choice to attend
  - The capacity of the parties to negotiate safely on their own behalf,
  - The extent to which any power imbalance can be redressed
  - Lack of commitment by one or more of the parties to resolve the dispute
  - Any relevant court orders which make ADR difficult (eg: a restraining order)
  - Cultural factors and considerations
  - Legal representation of the parties
  - The likelihood that the costs of ADR outweigh its benefits.

- 8 NADRAC's work in this area is at a very early stage, and the factors listed above are not necessarily valid or complete. There is little empirical evidence on the actual relationship between these factors and effectiveness of ADR. Work on this project is therefore to continue.

### 3.4 Court ADR

- 1 NADRAC is charged with providing advice on 'the quality, effectiveness and accountability of Commonwealth alternative dispute resolution programs ... (and) the desirability and implications of the use of alternative dispute resolution processes to manage case flows within courts and tribunals'.
- 2 NADRAC provided additional advice to the Attorney-General's Department in relation to the *Administrative Review Tribunal Bill 2000* and the *Administrative Review Tribunal Bill (Consequential and Transitional Provisions) Bill 2000*. NADRAC suggested that the legislation should make explicit reference to alternative dispute resolution processes in order to provide guidance to the proposed Administrative Review Tribunal (ART) in drafting practice directions and procedures. Work on this matter has been deferred since the rejection by the Senate of the ART legislation.
- 3 The Federal Magistrates Service produced its draft rules in April 2001, and asked NADRAC to comment on these rules. A submission was prepared which reiterated NADRAC previous advice to the Attorney-General on the *Federal Magistrates Service Act* and the *Federal Magistrates Service Regulations and Rules*.
- 4 NADRAC members observed that several common principles had been expressed in its previous submissions on Court ADR. Some of these themes were:
  - Governing legislation for courts should set out the objectives sought by including a range of dispute resolution processes within the Court.
  - The processes need to be clearly and consistently defined to provide a framework for sufficient control and differentiation.
  - Lawyers and court staff should advise all clients of the availability of a range of dispute resolution processes.
  - The assessment of the suitability of each dispute to a dispute resolution process is an essential element.
  - All or any part of a dispute should be able to be referred to an appropriate dispute resolution process.
  - Courts should be able to determine a question of fact or law to assist a non-judicial dispute resolution process.
  - Mandatory referral to dispute resolution processes is acceptable in principle despite the apparent unwillingness of the parties to participate in the process.

- Dispute resolution services must be of high quality, with proper standards of training, ethics supervision and accountability.
  - Judicial officers involved in ADR processes should have the same qualifications as any other ADR providers approved by the Court.
  - There should be a diversity of providers of dispute resolution services both within the court, and externally.
  - Immunity provisions should not prevent consumer recourse against dispute resolution providers.
  - Courts should evaluate their dispute resolution processes.
- 5 It is expected that further work on developing principles and guidelines for court ADR will continue, in consultation with other bodies with an interest in this area.

### 3.5 ADR Definitions

- 1 NADRAC has consistently argued that consistency in terminology for ADR processes is a pivotal issue. Consistency ensures that clients of ADR/PDR services have realistic and accurate expectations about the processes they are undertaking, provides a basis for legislative and policy development, and underpins the development and implementation of standards for ADR/PDR service provider and practitioners. Consistency also facilitates the matching of different forms of dispute resolution processes for different disputes and different parties, enables effective data collection and evaluation and is necessary for effective complaint handling.
- 2 During 2000/2001 NADRAC undertook a review of its 1997 paper, *Alternative Dispute Resolution Definitions*. As part of that review, NADRAC consulted with a wide range of service providers and policy makers about their experience in using the paper. The majority of respondents were very supportive of paper and stressed the need to distribute it more widely and to encourage practitioners and members of the public to use it more widely. Many respondents emphasised the need for a common language.
- 3 The definitions committee considered options for redrafting the definitions paper, and will be continuing work on this project in the next year.
- 4 NADRAC also noted the decision by the Family Court of Australia to use the term ‘mediation’ to describe most of its Primary Dispute Resolution (PDR) processes. After correspondence and discussions with the Family Court, NADRAC organised a meeting with the Family Court, Federal Magistrates Service and the Attorney-General's Department to work towards a common language for ADR/PDR processes in the family law system. The meeting was held in Melbourne on 18 May 2001. The outcomes of the meeting are currently being considered by each of the participants.

### **3.6 Research, evaluation and data collection**

- 1 NADRAC is charged with providing advice on ‘the ongoing evaluation of the quality, integrity, accountability and accessibility of alternative dispute resolution services and programs, ... and on the need for data collection and research concerning alternative dispute resolution, and the most cost-effective methods of meeting that need’.
- 2 NADRAC sees research as being concerned with finding answers to broader theoretical and practice questions, while evaluation is concerned with the efficacy, operation and effectiveness of a particular program or approach. Data collection underpins both research and evaluation, as well as other processes such as administrative and accountability requirements.
- 3 NADRAC’s objectives in relation to ADR research, evaluation and data collection are to advocate for greater priority to be given to this area, to assist in formulating relative priorities, and to promote effective methodologies. NADRAC acknowledges that it does not have the resources to conduct comprehensive research or evaluation itself, and has therefore emphasised cooperation with other relevant bodies.
- 4 NADRAC has previously noted the lack of valid, comparable and reliable data on court ADR. It wrote to the Attorney-General in August 2000 suggesting that the Commonwealth could take a lead in this regard by encouraging federal courts and tribunals to include effective data collection on ADR in the development of their information systems. The Attorney accepted this suggestion and wrote to relevant agencies accordingly.
- 5 The chair of NADRAC held discussions with the Executive Officer of the Australian Institute of Judicial Administration (AIJA) on cooperation on research on Court ADR. Liaison with the AIJA is to continue.
- 6 In January 2001, NADRAC wrote to the Court Administration Working Group of the Steering Committee on Commonwealth–State Service Provision (administered by the Productivity Commission) seeking cooperation on developing activity and performance indicators for court ADR. Committee members and secretariat staff have met subsequently with representatives of the Court Administration Working Group. Discussions are continuing.

### **3.7 On-line ADR**

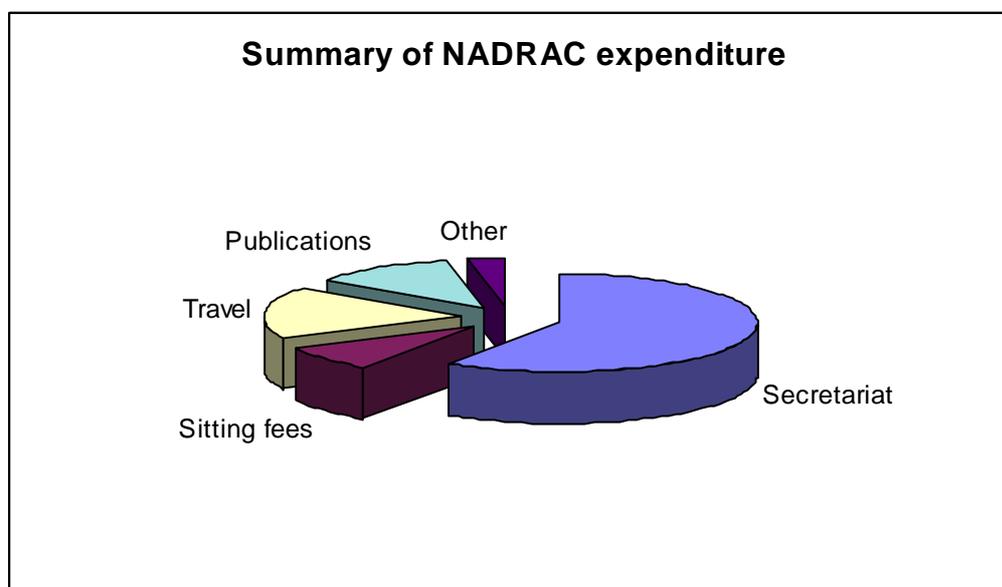
- 1 One of NADRAC’s identified priorities is to respond to increasing diversity in ADR. On-line ADR is an example of this diversity. While on-line ADR is not yet used extensively in Australia, it is likely to grow rapidly in importance as virtual interaction transforms how we manage and construe communication. It is therefore an important emerging area.
- 2 On-line ADR includes the resolution of disputes through technology such as such as video-conferencing, electronic data exchange and e-mail. Policy issue also arise in relation to the use of ADR to resolve on-line disputes, such as those associated with cyber-squatting, privacy or e-commerce.

- 3 Some issues raised by NADRAC in relation to on-line ADR include:
- confidentiality
  - security
  - jurisdictional matters
  - access and fairness
  - appropriateness and limitations for different types of disputes and parties
  - technical and logistical factors
  - training and standards requirements for practitioners/services.
- 4 The secretariat prepared a preliminary background paper in January 2001 in order to assist council members to scope the complex issue associated with on-line ADR. The paper was subsequently placed on the web-site, with an invitation for comment.
- 5 NADRAC plans to continue to examine this issue in next year, in consultation with other interested agencies and individuals.

## 4. Financial Report

NADRAC's expenditure is contained within Outcome 1 (*an equitable and accessible system of federal law and justice*), Output 1.1 (*maintenance and development of the federal system of justice and the rights and responsibilities of individuals, family, business and the community*), of the Attorney-General's Department's audited financial statements published in the Department's Annual Report.

Item	Expenditure \$	Totals \$
<b>Salaries</b>		
Secretariat salaries	99,880	
Other employee costs	19,650	
Sitting fees (to individuals)	8,544	
Subtotal		128,074
<b>Administration</b>		
Sitting fees to organisations	7,774	
Consultants fees	900	
Hospitality	2,647	
Training and conferences	1,500	
Venue hire/incidentals	100	
Meeting costs	1,049	
Domestic airfares	22,921	
Travel allowance	8,683	
Car/taxi hire	3,456	
Car parking	167	
Printing	23,502	
Subscriptions	389	
Library books	90	
Communication charges	240	
Subtotal		73,418
<b>TOTAL EXPENSES</b>		<b>201,482</b>

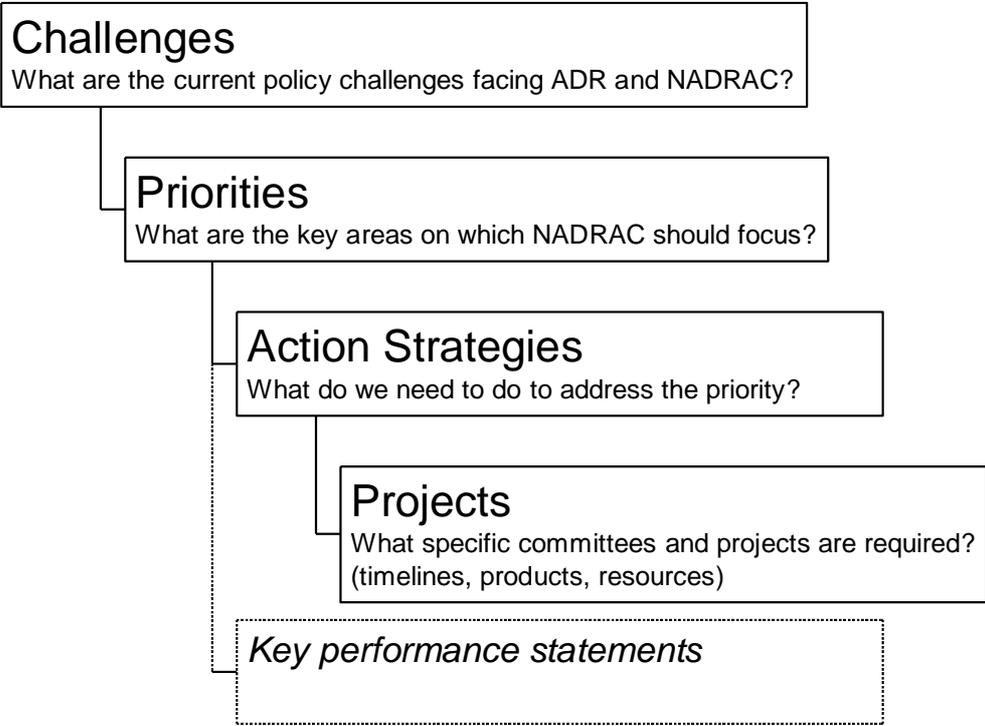


# 5. Report against work plan

## 5.1 Planning process

Under its charter, NADRAC is required to ‘develop a forward work plan, including reporting dates, for each year and provide a copy of that work plan to the Attorney-General’. During 2000–2001, NADRAC members identified challenges and priority areas, proposed several action strategies and developed (or continued) several projects. These formed the basis for NADRAC’s workplan in 2000/2001, which was provided to the Attorney-General in September 2000.

Planning process



## 5.2 Challenges and priority areas

Challenges identified were

- NADRAC’s role and functions, including the pressure for NADRAC to adopt a policing role, prioritising issues for relevance, degree of acceptance of recommendations, the nature of NADRAC’s role in disseminating information, and the potential impact of a new peak body, appointment processes, and effective use of member and staff time.

- Nature of ADR, including institutionalisation of ADR, representing ADR diversity, including ‘alternative’ ADR and new/hybrid models, and broadening the diversity of NADRAC membership and communications.
- The need for research, tracking of overseas developments, and evaluate of ADR (such as in the Federal Magistrates Service)

NADRAC members then identified the following priority areas:

- promoting the quality of practice in ADR
- facilitating the development of Court based ADR
- responding to increasing diversity in the ADR field
- advocating for effective ADR research and evaluation.

### 5.3 Action strategies

NADRAC identified the following action strategies for each priority area. Progress is reported in the right hand column:

#### ***Promoting the quality of ADR practice***

*Key Performance Statement:* Widespread adoption of the principles and recommendations developed by NADRAC

#### *Action Strategies*

1. Develop and disseminate criteria for referral to ADR	Criteria identified, included in a letter sent to the Federal Magistrates Service in December 2000 and publicised in newsletter and web-site.
2. Continue broad consultation on the Standards Discussion Paper and prepare report to the Attorney-General	Consultations and report completed. Report launched and disseminated NADRAC may have a role in assisting in some aspects of implementation.
3. Revise the definitions paper	Consultations were undertaken on the paper during 2000/2001, and revisions and future formats have been suggested.
4. Create and promote definitive ADR policy	No action
5. Disseminate useful products for service providers - eg principles on key issues in ADR, definitions, standards paper, development guide	Limited work has been undertaken (see actions above). Documents have been placed on the web-site (eg ‘On line ADR’)
6. More NADRAC presentations in a range of forums/promotion of NADRAC in community public forums	NADRAC members and staff have spoken at several seminars/conferences, and have initiated a process of public forums to coincide with council meetings.

## **Facilitating the development of effective Court ADR**

*Key Performance Statement:* Effective input by NADRAC into the development of ADR in the Courts

### *Action Strategies*

1. Identify and select key policy issues regarding ADR and courts, for action and advice :	Secretariat has prepared a summary of NADRAC's past advice. Matter to be further considered by new members.
2. Provide advice on the ART Bill	A series of correspondence prepared, and a meeting conducted with AGD officers. Further action stalled due to the Senate's rejection of the ART Bill.
3. Develop models and/or principles for dispute system design in statutory contexts	See 1 above
4. Gain knowledge of and develop links with courts Ensure all CEO's and Chief Justices of all courts are aware of NADRAC's interest in the development of court ADR and that our input advice, expertise is available Gain knowledge/information regarding actual practices in courts	Some links have been made through publications, liaison and guest speakers. Liaison has been undertaken with the Federal Magistrates Service, Family Court, AAT, Federal Court and Adelaide Magistrates Court.
5. Effectively disseminate ideas that are currently being used	To be further considered.

## **Responding to increasing diversity and innovation**

*Key Performance Statement:* NADRAC is aware of and strategically influences new developments in ADR

### *Action Strategies*

1. Develop a proposal/discussion paper on the development of a peak body(ies) in Australia	A specific proposal or paper not prepared, but issues of a peak body were considered in the report on standards
2. Invite/coopt people to Committees from diverse backgrounds not represented on NADRAC	Cooption process agreed to in principle, but not yet implemented
3. Increase collaboration with State and Territory based ADR groups	Forum held in SA, in cooperation with ADR groups. Members and staff have maintained informal contacts. No formal process has been implemented; Law Council and NADRAC have agreed to hold a joint meeting in the future.
4. Additional	Background paper on on-line ADR prepared by secretariat in January 2001 and placed on web-site in April 2001

## **Advocating effective ADR research and evaluation**

*Key Performance Statement:* A sound, evidence-based approach to NADRAC's input into ADR policy and practice to effectively meet NADRAC's charter obligations

### *Action Strategies*

<p>1. Develop a policy on ADR evaluation and research</p> <p>    Develop approach to evaluation and research</p> <p>    Formulate research and evaluation policy</p> <p>2. Promote and facilitate ADR research and evaluation by encouraging debate within the sector about statistical analysis issues, eg what is success and how should it be measured</p> <p>3. Maintain and improve research information, and keep up to date with what research is currently being conducted in Australia and overseas.</p>	<p>Overall policy document developed and provided at August 2000 meeting (for internal purposes). (see Research Committee)</p> <p>Issue of success indicators raised in newsletter, in forums and in standards report</p> <p>Consultations undertaken in relation to collection of court ADR</p> <p>Ongoing. List of web-sites developed (for NADRAC members), and NADRAC is place on relevant circulation lists.</p>
---	---

## 6. Summary of NADRAC's submissions and publications

---

This table summarises the major points, recommendations or findings which NADRAC has advanced in its past submissions, report and discussion papers. Documents marked \* are available on NADRAC's web-site ([www.nadrac.gov.au](http://www.nadrac.gov.au))

<b>Date</b>	<b>Matter</b>	<b>Summary</b>
May 2001	<b>ADR/PDR terminology</b> Background paper for meeting convened by NADRAC between Family Court, Federal Magistrates Service and Attorney-General's Department	Identifies issues surrounding use of terminology for PDR/ADR in the family law systems
May 2001	<b>Federal Magistrates Service Draft Rules</b> Submission to Registrar of Federal Magistrates Service	Reiterates previous advice See 1999 – 12
April 2001	<b>Standards for ADR</b> Report to Attorney-General <i>A Framework for ADR Standards*</i>	<ol style="list-style-type: none"> <li>1. Recommends framework (= guidelines for developing standards, a code and enforcement of code by appropriate means); recognise diversity</li> <li>2. Service providers to adopt and comply with code of practice</li> <li>3. Service providers to have a complaints mechanism</li> <li>4. Examine feasibility of ADR Ombudsman</li> <li>5. Monitor complaints</li> <li>6. Compliance based predominantly on self-regulation</li> <li>7. Compliance with code of practice as part of Commonwealth contracts</li> <li>8. Other governments also to require compliance with a code</li> <li>9. Consumer education activities to encourage code</li> <li>10. Mandating bodies give special attention to quality</li> <li>11. Review of statutory provision</li> <li>12. Determine need for accreditation on a sector by sector basis</li> <li>13. Principles suggested for accreditation of practitioners</li> <li>14. Accrediting bodies develop mutual recognition</li> <li>15. Selection process to be fair, transparent, effective</li> <li>16. Engagement of practitioner based on knowledge, skills and ethics, not necessarily tertiary qualifications</li> <li>17. Training providers inform participants of expected outcomes</li> <li>18. Training take account of (framework); be performance based, and use best practice learning strategies</li> <li>19. Explore peak body</li> <li>20. Resources commensurate with risks and benefits</li> <li>21. Improved data collection</li> </ol>

January 2001	<b>On-line ADR</b> Background paper*	This is a background paper only and is not intended to state NADRAC's position. It was placed on the web-site, with an invitation for comment from interested parties.
December 2000	<b>Criteria for referral to ADR</b> Letter of advice to Federal Magistrates Service	<p>Assessment of suitability is complex. There is a lack of empirical research on suitability criteria. Some factors identified are:</p> <ul style="list-style-type: none"> <li>• Current fear or high risk of violence by or to a party</li> <li>• Allegations of child abuse</li> <li>• An unmanaged mental illness or intellectual disability without appropriate advocacy</li> <li>• A clear statement by one party that they will not participate in ADR or that they 'want their day in court'</li> <li>• A statement by the parties that they want to resolve their conflict in a non-adversarial forum</li> <li>• Bad faith bargaining, or clear likelihood of this</li> <li>• The intention of one party to use the process to harass the other</li> <li>• Over riding public interest</li> <li>• A matter which is primarily a dispute of fact</li> <li>• Parties who have major, non-negotiable value differences</li> <li>• The ability of the parties to make an informed choice to attend</li> <li>• The capacity of the parties to negotiate safely on their own behalf</li> <li>• The extent to which any power imbalance can be redressed</li> <li>• Lack of commitment by one or more of the parties to resolve the dispute</li> <li>• Any relevant court orders which make ADR difficult (eg a restraining order)</li> <li>• Cultural factors and considerations</li> <li>• Legal representation of the parties</li> <li>• The likelihood that the costs of ADR outweigh its benefits.</li> </ul>
May 2000	<b>Administrative Review Tribunal</b> Letters of advice to Attorney-General's Department	Need for specific reference to ADR processes
June 2000	<b>ADR data collection in courts</b> Letter to Attorney-General	Need for improved data collection on Court ADR, starting with federal courts and tribunals
March 2000	<b>Use of term mediation</b> Letter to Family Court of Australia	Need for consistent terminology

March 2000	<b>Franchising Code of Conduct</b> Submission to Franchising Policy Council*	<ol style="list-style-type: none"> <li>1. Recommend research and data collection to establish benchmarks against which information can be measured</li> <li>2. The code provisions should be kept under review</li> <li>3. There is value in making parties participate fully but do not favour the term 'in good faith'</li> <li>4. Oppose requirement for mediator to certify that parties made a genuine attempt to mediate</li> <li>5. Code to refer to mediation as the principal method of DR</li> <li>6. Add a 'case stated' option for a quick, relatively inexpensive and final decision</li> <li>7. Commonwealth could require parties to mediate before enforcing the provision of a franchising agreement</li> <li>8. Recommend use of standards</li> </ol>
March 2000	<b>Standards for ADR</b> Discussion paper <i>The Development of Standards for ADR*</i>	<ol style="list-style-type: none"> <li>1. Proposed framework for ADR standards</li> <li>2. Asked 70 questions for comments</li> </ol> <p>See April 2001 – final report</p>
June 2000	<b>Parenting Plans</b> Joint Letter of Advice to Attorney-General (with Family Law Council)*	<ol style="list-style-type: none"> <li>1. Encourage use of parenting plans, and use consent orders where enforceability is sought</li> <li>2. Repeal registration provisions</li> <li>3. Encourage an integrated parenting plans/consent order package</li> </ol>
December 1999	<b>Federal Magistrates Service Rules and Regulations</b> Part 2 Report to Attorney-General*	<ol style="list-style-type: none"> <li>1. Provide information/education about ADR through information sessions, brochures, initiating documents</li> <li>2. Develop and publish guidelines (indicators/contraindications) for referral to ADR</li> <li>3. ADR practitioner has an obligation to assess for suitability</li> <li>4. Approval of ADR service providers by Attorney-General's Department (quality approval process) as apposed to Family Law Regulations for family and child mediators– link to immunity and complaints process</li> <li>5. Encourage parties to go to Court to obtain and referral order to ADR</li> <li>6. Court personnel should not automatically be qualified as ADR practitioners</li> <li>7. Need for standards referral orders (providing certain powers and obligations of ADR practitioner)</li> <li>8. Incorporate definitions into rules of court</li> <li>9. Immunity/confidentiality should not prevent consumer redress</li> <li>10. Regulations should specify that ADR service providers have a complaints mechanisms</li> <li>11. ADR practitioner should report back to court on termination (defined headings, but not willingness to cooperate)</li> <li>12. Evaluate ADR services</li> <li>13. Cost to take account of ADR costs, and refusal to attend ADR</li> <li>14. Court should scrutinise ADR agreements</li> </ol>

August 1999	<b>Diversity</b> 'A Fair Say' Public guide to managing differences in mediation and conciliation*	Provides practical guidelines for managing diversity
March 1999	<b>Federal Magistrates Service – Act</b> Part 1 Report to Attorney-General*	<ol style="list-style-type: none"> <li>1. ADR should be an integral part of the Court</li> <li>2. Legislation should refer to DR, not ADR processes</li> <li>3. Focus on procedural flexibility</li> <li>4. ADR not a replacement for judicial adjudication</li> <li>5. Emphasise proper assessment, referral and quality</li> <li>6. Set out objectives in a legislative provision</li> <li>7. Legislation should name each DR process</li> <li>8. Use the NADRAC definitions and consistent terminology</li> <li>9. Court to have power to make rules about procedure</li> <li>10. Access to legal representation/advice/other support</li> <li>11. Support a diversity of providers of DR services</li> <li>12. Legislation should address the issue of standards</li> <li>13. Court to use list of appropriate DR providers</li> <li>14. Judge not to adjudicate disputes where s/he has done ADR</li> <li>15. Court to make regulations which set Court ADR fees</li> <li>16. Duty to advise clients of the availability of DR processes</li> <li>17. Require provision of written information about DR</li> <li>18. All/any part of a dispute to be referable to DR process</li> <li>19. Range of DR processes to be available at any stage</li> <li>20. Mandatory referral by qualified assessor is acceptable</li> <li>21. Court evaluation of all its DR processes is vital</li> <li>22. DR providers to have similar immunity to judges</li> <li>23. Implement a complaints procedure (against DR providers)</li> <li>24. Court to review agreement in limited circumstances</li> <li>25. Court to be able to terminate a non-judicial DR process</li> <li>26. Court to determine a question of fact/law to assist ADR</li> <li>27. Dispute resolver to provide limited reports to Court</li> <li>28. Non-compliance/refusal to provide essential information</li> <li>29. DR providers-appropriate powers to facilitate outcomes</li> <li>30. Magistrates should have substantial experience in ADR</li> <li>31. Legislative protection should not extend to pre-filing</li> <li>32. Court to make rules on a simple, inexpensive process for initiating action within the court without pleadings</li> </ol>

February 1999	<b>Law Reform Commission of Western Australia Review of the Civil and Criminal Justice System</b> Response to Consultation Paper on The Use of Court-based or Community Alternative Dispute Resolution Schemes and Alternative Forums for Adjudication	<ol style="list-style-type: none"> <li>1. Importance of a range of DR processes</li> <li>2. Importance of data collection on DR</li> <li>3. Confidentiality of court files and details of DR attendance</li> <li>4. Importance of criteria for appraisal/screening of each case</li> <li>5. Support court with multiple dispute resolution 'doors'</li> <li>6. The ADR process should be adaptable to the particular case</li> <li>7. Timing of when ADR might be used</li> <li>8. More information about the court and ADR</li> <li>9. Incentives for disputants to use ADR</li> <li>10. Need to create a change of legal practitioner culture</li> <li>11. The state should bear the costs of ADR in the court system</li> <li>12. Parties should use external ADR at their own cost</li> <li>13. Payment for court-annexed ADR is a complex issue</li> <li>14. Appropriate training and qualification standards</li> <li>15. A judicial officer who has acted as an ADR practitioner should be disqualified from subsequently adjudicating the same dispute</li> <li>16. ADR to proceed on a 'without prejudice' basis</li> <li>17. Limited statutory duty of confidentiality</li> </ol>
February 1999	<b>Small Business Access to the Legal System</b> Advice to Attorney-General's Department in response to the Suggestions Paper of the Review of Small Business Access to the Legal System	Supported the thrust of the recommendations, but concerned that some recommendations impractical and raise resource implications; need to give attention to processes of implementation
January 1999	<b>Workplace mediation</b> Submission to Department of Workplace Relations and Small Business in response to Ministerial Discussion Paper: Approaches to Dispute Resolution: A Role for Mediation?	<ol style="list-style-type: none"> <li>1. Distinguish mediation from conciliation in industrial relations</li> <li>2. Need for assessment and screening of matters for suitability</li> <li>3. Proceed to arbitration or adjudication after unsuccessful mediation (ie not proceed to conciliation)</li> <li>4. Mandatory mediation acceptable in certain circumstances (a gatekeeper required)</li> <li>5. Public and private providers should be able to deliver mediation services; mediators should have working knowledge of the legislation</li> </ol>

September 1998	<b>Federal Dispute Resolution</b> Australian Law Reform Commission Review of the Adversarial System of Litigation – Response to Issues Paper No 25 ADR - its role in federal dispute resolution	<ol style="list-style-type: none"> <li>1. Benefit of ADR = timeliness, cost effectiveness, flexible outcomes and client satisfaction</li> <li>2. Need for a variety of DR processes</li> <li>3. Flexibility importance</li> <li>4. Gatekeeping and assessment is critical (criteria offered)</li> <li>5. Need to properly design the ADR system</li> <li>6. Need to establish evaluation criteria for ADR</li> <li>7. Timing of ADR important (and early intervention may be appropriate)</li> <li>8. Avoid blurring adjudication with facilitative and advisory processes</li> <li>9. Supports ADR training for judges</li> <li>10. ADR should not be used to reduce funding for courts</li> <li>11. Drew attention to diversity paper in relation to NNTT</li> <li>12. Safeguards re compulsions in ADR (assessment, etc.)</li> <li>13. Standards should include both neutrality and impartiality</li> <li>14. Limit immunity</li> <li>15. Conditions suggested for confidentiality</li> <li>16. Standards – await NADRAC report</li> <li>17. Lawyers should advise clients of ADR</li> </ol>
April 1998	<b>Small Business</b> Department of Workplace Relations and Small Business - Response to ADR Information Kit for Small Business	Editorial suggestions
April 1998	<b>Standards Australia</b> Comment on the proposed Standard on Dispute Resolution	<ol style="list-style-type: none"> <li>1. Suggests amendments to proposed criteria for ADR processes</li> <li>2. Makes a series of editorial suggestion</li> </ol>
March 1998	<b>Benchmarks</b> Australian Competition and Consumer Commission Round Table on Small and Large Business Disputes – Comment on Implementation of the Benchmarks for dispute avoidance and resolution - a guide	<p>Need to provide information to small business via informal networks</p> <p>Specific recommendation on additions to proposed kit</p>
December 1997	<b>Primary Dispute Resolution</b> Attorney-General's Department – Response to Discussion Paper on Delivery of PDR Services in Family Law	<ol style="list-style-type: none"> <li>1. Confine term 'Primary Dispute Resolution' to mediation and conciliation</li> <li>2. Support choice of DR service, accessibility, efficiency, accountability, quality, integrated service panning and policy development , diversion from litigation</li> <li>3. Raises issues of accountability in context of outsourcing</li> <li>4. Raises issues about the functions of a proposed Office of Family Relationship Services</li> </ol>

November 1997	<b>Diversity</b> Discussion Paper on Issues of Fairness and Justice in Alternative Dispute Resolution*	Identifies challenges for ADR services in responding to diversity and suggests the following be addressed: <ol style="list-style-type: none"> <li>1. Dispute resolution system design</li> <li>2. Training</li> <li>3. Access to ADR services</li> <li>4. Cost</li> <li>5. Social trends of public concern and interest</li> <li>6. Links with associated services</li> <li>7. Recruitment of members of minority groups</li> <li>8. Use of advocates, legal representatives, interpreters, etc.</li> </ol> and proposes practical guidelines concerning assessment, and modifications and accommodations.
November 1997	<b>Australian Law Reform Commission</b> Review of the Adversarial System of Litigation - Response to Issues Paper No 20 Alternative or Assisted Dispute Resolution	<ol style="list-style-type: none"> <li>1. Persuasion of parties to use ADR - unlikely to be appropriate by judicial officers, appropriate for non-judicial officers – early in litigation process</li> <li>2. Mandatory mediation requires certain conditions and safeguards (including ‘gatekeeper’)</li> <li>3. Supports diversity of ADR providers</li> <li>4. Generally court staff should not move from one DR process to another</li> <li>5. Examine immunity – ensure consumer redress possible</li> <li>6. Respect party self determination, but also identify criteria for referral to ADR</li> <li>7. Need for better ADR data collection</li> </ol>
March 1997	<b>Family Law Regulations</b> Report to the Attorney-General Primary Dispute Resolution in Family Law - on Part 5 of the Family Law Regulations*	<ol style="list-style-type: none"> <li>1. Compliance with regulation only for those seeking protection of the Act</li> <li>2. Amend immunity to enable consumer recourse</li> <li>3. Retain tertiary qualification requirements for the present, but consider recognition of specific family law experience in the future</li> <li>4. Recognise accountants (under reg 60)</li> <li>5. Include ‘admitted’ legal practitioner (eg Clerkships, not university educated)</li> <li>6. Limited authorisation scheme for ATSI mediators</li> <li>7. Provide means to assist ATSI people gain appropriate tertiary qualifications</li> <li>8. Limited authorisation scheme for NESB mediators</li> <li>9. Improve access to tertiary courses</li> <li>10. Amend subregulation 60(3) – mediation of that kind to general reference to mediation of family disputes</li> <li>11. Provide authorisation scheme for ‘true grandparents’ of mediation</li> <li>12. Remove subregulation 60(4)</li> <li>13. Amendment to wording – sub para 60(3)(b)(ii)</li> <li>14. Require at least 3 days specific training in family mediation issues</li> <li>15. Independent supervisors should be experienced in family mediation</li> <li>16. Include as supervisors people who are eligible for membership of relevant bodies (ie not necessarily current members)</li> <li>17. Provide that (a) mediator conducts an assessment or is satisfied that an has been appropriately conducted; and (b) decision to proceed or no could be taken by mediator or intake officer</li> </ol>

		18. Remove requirement for written statement and provide that information is provide as appropriate t the case; and specific changes recommended to the nature of information provided
March 1997	<b>ADR Definitions</b> Paper on Alternative Dispute Resolution Definitions*	A paper defining term for ADR facilitative, advisory and determinative processes
February 1997	<b>Authorisation of Family and Child Counsellors</b> Letter to Attorney-General's Department in response to request for advice on interim arrangements for the authorisation of Family and Child Counsellors	High level of training and expertise required for family and child counsellors, due to incidence of violence and abuse
February 1997	<b>AFP/NCA complaints</b> Attorney-General's Department - Response to request for advice on Australian Law Reform Commission Report No 82 – Integrity: but not by trust alone: AFP and NCA complaints and disciplinary systems	<ol style="list-style-type: none"> <li>1. Define mediation and conciliation</li> <li>2. Examine public interest</li> <li>3. Carefully consider whether officers from within the police force be used as mediators</li> <li>4. Need for adequate training</li> <li>5. Relate ADR to good management practices</li> <li>6. Consider Standards Australia AS 4269 1995</li> <li>7. Provide time limits for processes, with flexibility</li> <li>8. ADR should not be considered in some cases – this to be determined on an individual – not 'type' basis</li> <li>9. ADR should not be compulsory for complainants, but possibly for members of police force</li> </ol>
January 1997	<b>Benchmarks for Consumer Dispute Resolution Schemes</b>	Include specific reference to situations where ADR may be inappropriate, such as power imbalance
January 1997	<b>Non-consensual mediation in the Federal Court of Australia</b> Letter of advice to Attorney-General's Department -	<ol style="list-style-type: none"> <li>1. Mandatory mediation may be appropriate in some circumstances; a properly trained 'gatekeeper' is required, and criteria applied for referral.</li> <li>2. Mediators should have the time appropriate to meet the needs of the parties.</li> </ol>
November 1996	<b>Government Service Charter Initiative</b>	In staff training section, address issues of power imbalance and potential biases between consumers and providers
October 1996	<b>Youth Homelessness</b> Submission to Youth Homelessness Taskforce	Address issue of family violence, family dysfunction and power imbalance in considering youth reconciliation services
October 1996	<b>Family Services</b> Submission to Parliamentary Committee into Aspects of Family Services	<ol style="list-style-type: none"> <li>1. Not appropriate for preventive family services to be provided by the courts</li> <li>2. Provide easy access to a range of DR services</li> <li>3. Monitor impact of any new fees for service (for family court counselling)</li> <li>4. Attend to issue of family violence</li> <li>5. Support provision of quality mediation services provided by State Governments agencies</li> </ol>
June 1996	<b>Uniform succession laws</b> Submission to Queensland Law Reform Commission	Reforms to succession laws should make reference to ADR processes in relation to disputes over estates.