The National ADR Advisory Council (NADRAC) is an independent body, which provides advice on ADR to the Commonwealth Attorney-General. Its reports and publications cover standards for ADR, diversity, ADR in courts and tribunals, family law PDR, ADR and small business and on-line ADR.

For more information contact the NADRAC secretariat at

Robert Garran Offices, BARTON ACT 2600  
Phone 02 6250 6272 Fax 02 76250 5911  
e-mail nadrac@ag.gov.au

or visit NADRAC’s web-site  
www.nadrac.gov.au
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Year in Review

This annual report reflects the breadth of work undertaken by the National Alternative Dispute Resolution Advisory Council in the past year. This breadth reflects the way in which the practices and philosophies of alternative dispute resolution (ADR) have become widely accepted and incorporated within courts and tribunals, in diverse industries and in the general community.

The continued development of ADR, and the fact that an increasing range of organisations and individuals now have an strong interest in it, have required that NADRAC not only to address many diverse policy issues, but also to widen its consultation.

A feature of the past 12 months has been NADRAC’s commitment to engaging actively with those who have similar interests and goals. It commenced a joint research project with the Australian Institute of Judicial Administration on the subject of court referral to ADR. It consulted with the Law Council of Australia and the Office of Parliamentary Counsel on the development of a database and guide on Commonwealth ADR statutory provisions. It convened a national round table that brought together ADR researchers and organisations with a view to suggesting future priorities and strategies for ADR research. It considered submissions in response to ADR Terminology: a discussion paper and published a summary of these submissions. It consulted with other organisations with an interest in ADR practices in Indigenous communities and, at its meeting in Alice Springs, initiated a series of consultative forums with Indigenous people.

NADRAC’s major focus in 2002–2003 has been preparation for its conference on business ADR, scheduled for September 2003. This will be NADRAC’s first ever conference, and, as far as it is aware, the first conference in Australia aimed primarily at the business users of ADR services. The conference is very much a collaborative project and NADRAC is grateful for the support it has received for this conference from industry associations and from ADR organisations.

Four council meetings were held during the past year at Brisbane/Robina, Melbourne, Adelaide and Alice Springs. Council members met with members of the judiciary, ADR practitioners and others during these meetings. The Alice Springs meeting, which was the first time that NADRAC had met outside a major metropolitan area, provided a valuable opportunity to meet those providing services to remote areas in Australia.

During 2002–2003, NADRAC made submissions to:

- the Attorney-General on provisions in the UNCITRAL Rules for International Commercial Conciliation
- the Attorney-General’s Department regarding (a) a review of the Federal Magistrates Service, and (b) proposed amendments to section 19N of the Family Law Act 1975
- the Family Court of Australia in relation to (a) family violence and (b) the proposed Family Law Rules 2004
• the Department of Education, Science and Technology on national research priorities
• the National Judicial College of Australia on the need for judicial education in ADR, and
• Standards Australia on the proposed revision to AS 4608-1999  Australian Standard on
  the prevention, handling and resolution of disputes.

It is pleasing that NADRAC’s work is well regarded both in Australia and overseas. The
quality of its work rests both on the expertise and commitment of its members and on its ability
to communicate with others with an interest in ADR. There were no changes to council
membership during 2002–2003. This continuity in membership has enhanced the council’s
ability to build on the work of previous members and to make very valuable contributions to
the development of ADR in Australia.

Professor Laurence Boulle
Chair
1. About NADRAC

Establishment

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 entitled Access to Justice - an Action Plan. NADRAC’s charter is outlined below.

Charter

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.

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.
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.

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.

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 submission must be provided to the Attorney-General as soon as possible after the submission is dispatched.

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.

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.

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

The Attorney-General appoints members to the council on the basis of their individual expertise and not on the basis of their membership of any organisation. There are currently 12 members, including the chair. Members come from around Australia and bring to the council a broad range of experience in the area of dispute resolution. There were no changes to membership during 2002–2003.

Members during 2002–2003

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Date of first appointment</th>
<th>Expiry date of current term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professor Laurence Boulle</td>
<td>Chair</td>
<td>6 April 1998</td>
<td>31 December 2003</td>
</tr>
<tr>
<td>Ms Helen Bishop</td>
<td>Member</td>
<td>30 August 2001</td>
<td>29 August 2004</td>
</tr>
<tr>
<td>Mr Alan Campbell</td>
<td>Member</td>
<td>30 August 2001</td>
<td>29 August 2004</td>
</tr>
<tr>
<td>Dr Mary Edmunds</td>
<td>Member</td>
<td>30 August 2001</td>
<td>29 August 2004</td>
</tr>
<tr>
<td>Ms Barbara Filipowski</td>
<td>Member</td>
<td>6 April 1998</td>
<td>8 July 2004</td>
</tr>
<tr>
<td>Mr Ian Govey</td>
<td>ex officio</td>
<td></td>
<td>Not applicable</td>
</tr>
<tr>
<td>The Hon. John Hannaford</td>
<td>Member</td>
<td>30 August 2001</td>
<td>29 August 2004</td>
</tr>
<tr>
<td>Ms Norah Hartnett</td>
<td>Member</td>
<td>30 August 2001</td>
<td>29 August 2004</td>
</tr>
<tr>
<td>Mr Warwick Soden</td>
<td>Member</td>
<td>11 August 1998</td>
<td>28 April 2005</td>
</tr>
<tr>
<td>Professor Tania Sourdin</td>
<td>Member</td>
<td>29 April 2002</td>
<td>28 April 2005</td>
</tr>
<tr>
<td>Mr John Spender QC</td>
<td>Member</td>
<td>29 April 2002</td>
<td>28 April 2005</td>
</tr>
<tr>
<td>Ms Lynn Stephen</td>
<td>Member</td>
<td>29 April 2002</td>
<td>28 April 2005</td>
</tr>
</tbody>
</table>
Profile of members as at 30 June 2003

Professor Laurence Boulle (Chair)

Professor of Law, Bond University; Director, Independent Mediation Services Pty Ltd (Qld); former member of the Law Council of Australia’s ADR Committee; Consultant to government and the private sector on dispute resolution issues; Broad expertise in mediation practice and training; Member of Mediation Panels for Qld Settlement Weeks, Qld Building Tribunal, Legal Aid Office Qld, Qld Community Justice Program and Retail Shop Leases Tribunal. Professor Boulle has published extensively on ADR and mediation. He is the author of Mediation: Principles, Process, Practice, which has been published in local editions in New Zealand, South Africa, Singapore, Canada and the United Kingdom, and Mediation Skills and Techniques. He is editor of the ADR Bulletin and the dispute resolution title in Laws of Australia. He has been chair of NADRAC since 1998.

Ms Helen Bishop

Recently appointed to Curtin University WA, Aboriginal Studies Campus lecturing final year students in Aboriginal Community Development. Formerly Manager, Aboriginal Alternative Dispute Resolution Service, Ministry of Justice WA; team leader, Aboriginal Affairs Department, WA, case manager, National Native Title Tribunal and area manager Palm Island Community Corrections, Queensland, and other community work positions in Queensland. Ms Bishop has expertise in community mediation, and in dispute resolution within Indigenous communities.

Mr Alan Campbell

Consultant, mediator and PhD candidate researching child centred practice issues in family law through the University of SA; formerly Director of the Family Mediation Centre in Victoria, Executive Director of Family Services Australia, President Family Services Australia, Director of Mediation, Family Court of Western Australia, and a mediator and psychologist in private practice. Mr Campbell has broad practical, policy and research experience in family and child mediation.
Dr Mary Edmunds

Fellow, Centre for Cross Cultural Studies, Australian National University; formerly Member, National Native Title Tribunal; Director of Research, Australian Institute of Aboriginal and Torres Strait Islander Studies; research fellow, South East Arnhem Land Collaborative Research Project (Wollongong University funded by Rio Tinto); research fellow in native title, Australian Institute of Aboriginal and Torres Strait Islander Studies. A social anthropologist, Dr Edmunds has extensive practical experience in the resolution of complex native title claims and in the management of cases in a tribunal environment, and has in-depth knowledge of cultural issues affecting ADR. Her writings in the field include a 'Guide to mediation and agreement making under the Native Title Act' (co-authored with Diane Smith) and the editing of two volumes on regional agreements.

Ms Barbara Filipowski

Secretary and General Counsel, Sydney Ports Corporation; Ms Filipowski has experience in the banking industry, commercial dispute resolution and business management and administration; formerly Head of Dispute Resolution, Westpac Banking Corporation, where she was involved in, among others, many large commercial mediations, the mediation of foreign currency loan disputes and farm debt mediation.

Mr Ian Govey

General Manager, Civil Justice and Legal Services, Commonwealth Attorney-General’s Department. His areas of responsibility within the Department include courts and tribunals, alternative dispute resolution, family law, legal assistance and Commonwealth legal services. Mr Govey has been appointed by the Attorney-General as an ex officio member of the council.
The Hon. John Hannaford

Director, ADR Solutions (a mediation and arbitration business in Sydney); Adjunct Professor with the Negotiation and Dispute Resolution Programme at the University of Technology Sydney; member ADR Committee and Arbitration Committee of the Law Society of NSW; formerly NSW Attorney-General with policy responsibility for ADR; holder of other ministerial and parliamentary offices as a member of the NSW Parliament; former chairman of the Australia Council for Europe; previously a lawyer in private practice. John Hannaford has both extensive practical experience and in depth policy knowledge of ADR.

Ms Norah Hartnett

Federal Magistrate, Melbourne, formerly a barrister specialising in family law and a solicitor working in company, insurance and family law; formerly a member of the Victorian Bar Ethics Committee and member of the Family Law Section of the Law Council of Australia. Trained in mediation, Ms Hartnett has extensive expertise in the use of ADR within the court system.

Mr Warwick Soden

Registrar of the Federal Court of Australia, Sydney; Mr Soden has extensive experience in relation to ADR in the justice system. He is a member of the Federal Court ADR Committee and the Practice and Procedure Committee in matters concerning ADR. In particular, Mr Soden has played a major role in relation to ADR programs and initiatives in the Federal Court and the Supreme Court of NSW.
Professor Tania Sourdin
Professor, Law and Dispute Resolution, and Director, Conflict Resolution Research Centre, La Trobe University; member of the Administrative Appeals Tribunal, member of the NSW Consumer, Trader & Tenancy Tribunal; mediator with the NSW Retail Leases Dispute Unit and several other organisations. She has extensive experience in alternative dispute resolution training and is a lead trainer for LEADR. Prof. Sourdin has conducted research and independent reviews of a range of ADR and litigation schemes. She has published extensively on ADR and is author of Alternative Dispute Resolution (2002).

Mr John Spender QC
Mediator in private practice; appointed Queen’s Counsel in 1974, Acting Justice of the NSW Supreme Court 1994–1995; practised extensively in corporate and commercial law and other areas of litigation; served four terms as a member of the Federal Parliament until 1990; Australian Ambassador to France between 1996 and 2000. Mr Spender has undertaken mediation training with LEADR, Bond University and Harvard Law School.

Ms Lynn Stephen
Coordinator of the Community Mediation Service in Bunbury, WA, which deals with a range of neighbourhood and family matters. Ms Stephen has qualifications in nursing, health science and family mediation; received a Churchill Scholarship to study family mediation in the United States and United Kingdom; member of the Family Law Pathways Advisory Group (2000–2001).
Previous members of Council

- Professor Hilary Astor (previous chair)
- Ms Quentin Bryce AO
- Mr David Bryson
- Associate Professor Gay Clarke
- Professor Jennifer David
- Ms Magdeline Fadjiar
- Ms Wendy Faulkes
- Mr Danny Ford
- Ms Susan Gribben
- Mr Oscar Shub
- Associate Professor Kathy Mack
- Mr Richard Moss
- Ms Sue Pidgeon
- The Honourable Justice Nahum Mushin
- Mr Colin Neave
- Mr Kurt Noble
- Ms Bernadette Rogers
- Mr John Steele
- Mr Philip Theobald
- Ms Josephine Tiddy
- Dr Gregory Tillett
- Ms Kerrie Tim
Secretariat

Functions

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, and
- to manage NADRAC’s expenditure within the relevant budgetary allocations.

Staff

Staff of the secretariat during 2002–2003 were:

Director (full-time) David Syme
Legal Officer (part-time) Dhayani Yogesvaran (to October 2002)
Glenn Kilimann (from October 2002)

Administrative assistance was provided on a shared basis with other areas of the Civil Justice Division.

Contact details

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Phone 02 6250 6272 (international 61 2 6250 6272)
Fax 02 6250 5911 (international 61 2 6250 5911)
web www.nadrac.gov.au
e-mail nadrac@ag.gov.au
3. Meetings and forums

NADRAC held four council meetings during 2002-2003. In keeping with its desire to consult with dispute resolution practitioners and others with an interest in its work, NADRAC held a variety of forums and other consultative activities. Many of these forums coincided with council meetings.

NADRAC thanks Bond University and the Federal Court of Australia who provided venues for the meetings. NADRAC is grateful to each of the guest speakers and to those who assisted in promoting and organising the consultative forums. Finally, the contributions of those who attended the forums were most appreciated.

Brisbane/Gold Coast September 2002

NADRAC's September meeting was held at Bond University on the Gold Coast. On the evening before the meeting, NADRAC convened a round table in Brisbane. The round table included 20 people engaged in diverse aspects of ADR in South East Queensland. Participants were a cross section of ADR practitioners, members of the judiciary, researchers and academics.

NADRAC heard from guest speakers at their meeting. Prof. Walther Gottwald, Judge and Professor of Law, Lüneburg (Lower Saxony, Germany) provided a European perspective on Australian ADR based on his study tour to this country.

A research team from the University of Queensland, led by Assoc. Prof. Nadja Alexander, also addressed the meeting about their research into dispute resolution in Indigenous communities.

Melbourne November 2002

NADRAC met in Melbourne on 28 and 29 November 2002. About 50 people attended a public forum organised by NADRAC on 28 November. The forum aimed to seek the views of Victorian agencies and practitioners on ADR issues, and to inform participants of NADRAC’s work.

NADRAC members also met with Commonwealth and State judges and magistrates on 29 November to discuss court-based ADR. This proved to be a very valuable opportunity to discuss on an informal basis issues of common concern to both the judiciary and to ADR practitioners.

Adelaide March 2003

NADRAC met in Adelaide on 13 and 14 March 2003. In conjunction with the Family Law Council, it hosted a lunchtime forum on 13 March with judicial and court officers from South Australia. A joint session with the Family Law Council was also held on 14 March.

Assoc. Prof. Kathy Mack from Flinders University spoke to the council meeting on 13 March, outlining her work for NADRAC and the Australian Institute of Judicial Administration on the subject of court referral to ADR.
On the evening of 13 March NADRAC members held an informal meeting with members of the South Australian Dispute Resolution Association.

Alice Springs June 2003

NADRAC fourth meeting was in Alice Springs on 19 and 20 June 2003. This was the first council meeting held in the Northern Territory and the first held outside a major metropolitan area.

On 18 June NADRAC members met with local agencies and practitioners in order to provide information about NADRAC’s work and to hear of issues affecting ADR in Central Australia. 13 people attended the forum.

The next day, NADRAC members met with Indigenous practitioners and agencies that provide ADR services to Indigenous people. 8 people attended this meeting. The meeting enabled NADRAC to learn about ADR practices in Indigenous communities and to gain the ideas of Indigenous people on ADR issues examined by NADRAC. Members found the meeting very valuable and plan to meet with Indigenous groups at future meetings.
4. NADRAC work program

In its 2002 and 2003 work plans, NADRAC identified five key priority areas for its attention and developed strategies to address each of these priorities.

4.1 Effective use of ADR by Courts and Tribunals

Key issues under this priority include case management conferences, court diversion and diversionary conferencing, participation by Indigenous people in court connected ADR processes, conflicting responsibilities, the impact of mandatory referral, timeliness and criteria for referral to ADR, and referral by courts to community agencies.

**Strategies**

- Review statistical data on court ADR (see section 4.5 below)
- Undertake research on evaluation indicators for court ADR
- Undertake research on criteria for court referral to ADR, through AIJA
- Complete draft guidelines on criteria for referral to ADR by judiciary and court officers (see 2 and 3 below)
- Review statutory provisions on ADR (see 4.3 below)
- Review research into relative effectiveness of mandatory and non-mandatory ADR.

**Progress in 2002–2003**

**Research on Court referral to ADR**

Following a proposal by NADRAC, the Australian Institute of Judicial Administration (AIJA) approved a preliminary grant to enable a background paper to be prepared on the topic of criteria for court referral to ADR. The paper will assist AIJA and NADRAC to consider options for:

1. future research on this topic, including the development of a ‘best practice’ referral model
2. the development of referral guidelines for courts and tribunals
3. means for improving referral practices in courts and tribunals.

The researcher engaged for the project was Assoc. Prof. Kathy Mack from Flinders University. The joint NADRAC/AIJA advisory group to oversee the project comprised Professor Greg Reinhardt (AIJA), Professor Hilary Astor (Sydney University), Dr Andrew Cannon (Adelaide Magistrates Court), Dr Greg Lyons (Victorian Civil and Administrative Tribunal), Mr Ross Maxstead (Victorian Bar Association), Professor Laurence Boulle and Professor Tania Sourdin (NADRAC). Work on the paper was continuing.
4.2 Promoting the appropriate use of ADR

Key issues include the need to increase the take-up rate of ADR processes though enhancing community and business awareness, understanding and expectations of ADR, improved referral practices and promotion and marketing of ADR. There is a need to show results and for ADR to be seen as effective. In addition, NADRAC has a role in facilitating international exchange in ADR, such as in international commercial ADR.

Strategies

- Organise a national conference on promoting ADR
- Develop a guide for referral of matters to ADR (see 4.1 above)
- Update ADR terminology
- In conjunction with the International Legal Services Advisory Council and other relevant agencies, develop an international network of ADR policy advisory bodies.

Progress in 2002–2003

Conference on business ADR

NADRAC’s charter includes ‘programs to enhance … business awareness of the availability and benefits of alternative dispute resolution services’. NADRAC considered that a conference would demonstrate the benefits of ADR, show how ADR can be implemented successfully in business practices and enable participants to develop strategies that they could take back to their own businesses.

In August 2002, NADRAC wrote to industry associations advising them of the conference and seeking their support in its promotion. Those who accepted the invitation to become official industry supporters included the Australian Banking Industry Ombudsman, Australian Chamber of Commerce and Industry, Australian Competition and Consumer Commission, Australian Constructors Association, Australian Dispute Resolution Association, Electricity and Water Ombudsman of Victoria, Insurance Council of Australia, Law Council of Australia, National Electricity Codes Administrator Ltd and Professions Australia.

ADR organisations, in conjunction with individual practitioners and many of the industry supporters listed above, helped NADRAC to develop the program for the conference. The organisations included the Australian Commercial Disputes Centre, the Institute of Arbitrators and Mediators Australia, the Institution of Engineers, LEADR and Resolve Advisers. NADRAC engaged the services of the Strategic Issues Management Group to assist with communications and events management.

The conference, entitled ADR: a better way to do business was to take place at the Sheraton on the Park in Sydney on 4-5 September 2003.
Referral

Council deferred development of a guide to ADR referral, pending consideration of the outcome of the joint AIJA/NADRAC research project on court referral to ADR (see section 4.1 above).

ADR Terminology

NADRAC received 17 responses to ADR terminology: a discussion paper, which was launched by the Attorney-General on 12 June 2002. Four responses were from individuals and 13 from organisations.

The submissions raised important issues, not only about the use of terms in ADR, but about ADR policies and practices generally. Therefore, as an interim measure, NADRAC published the consolidated submissions on its web-site.

Following consideration of the submissions, NADRAC identified possible strategies for dealing with the issue of ADR terminology in the future and, at the end of the reporting period, was finalising a position statement and glossary of terms.

International links

NADRAC has maintained close liaison with the International Legal Services Advisory Council (ILSAC). Barbara Filipowski and Ian Govey are members of both councils and are able to report on developments. The respective secretariats also communicate on a regular basis.

The Director of the NADRAC secretariat was invited to present a paper on ADR at the International Symposium on WTO and Legal Services in Beijing on 18−20 September 2002. The Director also delivered a paper to the Fourth World Mediation Forum in Buenos Aires on 9−11 May 2003. These events provided a valuable opportunity to forge link with ADR groups in other countries. Individual NADRAC members also developed and maintained links with colleagues in other countries.

It is of note that several overseas commentators have applauded NADRAC’s work, especially on ADR standards, which one Scottish group described as ‘outstandingly the best they had come across’ on this subject.

4.3 Enhancing quality and consistency in ADR

Key issues include the quality and accessibility of ADR services, accreditation of practitioners and organisations and standards for ADR services.

In addition, there is a need to build a coherent and effective contractual and legislative framework for ADR. This framework includes criteria for ADR referral, terminology and definitions for ADR processes, effective case management, setting appropriate time frames, procedures for dealing with multiple parties, immunities for ADR practitioners, confidentiality and minimising the risks of unfair mediated agreements.
Strategies

• Review ADR terminology and definitions, based on consideration of responses to the terminology discussion paper

• Develop a guide for referral of matters to ADR

• Review existing legislative and contractual provisions, and develop model rules or legislation for ADR, including protections for parties and ADR practitioners

• Assist the Attorney-General's Department in its review of the PDR provisions in the Family Law Act

• Continued consultation and coordination:
  
  Consider and provide comment on models for accrediting ADR organisations and practitioners

  Consult with Commonwealth and State and Territory agencies on implementation of NADRAC’s recommendations

  Promote exchange of information about the development of ADR standards

  Review the standards contained in NADRAC’s report.

Progress in 2002–2003

Terminology, referral and statutory provisions

See Sections 4.1 and 4.2 above

Statutory provisions

Legislative frameworks underpin many of the issues considered by NADRAC, including standards, the liability or immunity of practitioners, the enforceability of outcomes and the implications of confidentiality.

During the reporting period NADRAC collaborated with the ADR Committee of the Law Council of Australia on two parallel projects which seek to bring about greater clarity and consistency in ADR statutory provisions. These projects are a review of existing ADR provisions in Commonwealth and State and Territory legislation, and the development of a guide that would identify relevant legal and policy issues impacting upon the legislative regulation of ADR processes.

The review project focused on existing ADR provisions in Commonwealth legislation. To do this, NADRAC developed a comprehensive database which, as well as assisting its own work, could also be made available to other bodies with an interest in ADR legislation. The database covers key ADR processes, such as mediation, conciliation and arbitration and identifies the statutory issues involved with each provision. The database would allow users to search by keyword, process, or issue.
In conjunction with the database, NADRAC commenced drafting a guide for developing ADR legislation. The guide would assist policy makers and others who are developing ADR legislation and would identify key issues that may need to be considered in such legislation. These issues include accreditation, terminology, obligations of practitioner and of parties, admissibility of evidence, enforceability of agreements, immunity and referral powers.

Family Law

NADRAC has maintained a keen interest in initiatives undertaken by the Family Law and Legal Assistance Division (FLLAD) in the Attorney-General's Department. These initiatives included the development of a quality framework for PDR services, a review of PDR provisions and terminology in the Family Law Act, as recommended by NADRAC in 2001–2002, and implementation of the recommendations of the Family Law Pathways Advisory Group. NADRAC staff were involved in consultations with FLLAD staff on these and other issues.

NADRAC also met with the Family Law Council at the Adelaide meetings of the two councils, held in March 2003. A joint meeting with Adelaide judges, magistrate and court staff was also arranged at this time.

NADRAC made two submissions to the Family Court in 2002–2003. The first concerned the Court’s family violence policies and the second concerned the proposed Family Law Rules 2004. NADRAC also made comment to the Attorney-General’s Department regarding the evaluation of the Federal Magistrates Service and on proposed amendments to section 19N of the Family Law Act.

Quality and Accreditation

Following its public forum in Melbourne 2002, NADRAC decided that it would be appropriate to consider further the feasibility of a national accreditation system for ADR practitioners, service providers or programs. This issue was raised in NADRAC’s 2001 report on ADR standards. In February 2003, the secretariat drafted an options paper for the benefit of council members.

Further work on this issue was to take place during 2003–2004, including planning for a national forum on the issue of ADR quality and accreditation, possibly to coincide with the National Mediation Conference in 2004.

Standards Australia

In April 2003, NADRAC prepared a response to Standards Australia in relation to the proposed revision to AS 4608-1999 Australian Standard on the prevention, handling and resolution of disputes. Further consultation with Standards Australia was expected during 2003–2004.
4.4 Supporting diversity and innovation in ADR

Key issues include culture as part of ADR, dispute resolution in Indigenous communities, ADR and minority groups, access to resources and appropriate support mechanisms. In addition, conferencing, diversionary programs, the use of technology in ADR, such as on-line ADR, need consideration.

Strategies

- Review ADR practices and programs directed towards Indigenous people and communities
- Monitor developments in relation to the use of IT in ADR
- Monitor development in other areas as they arise.

Progress in 2002–2003

Indigenous ADR

NADRAC’s charter requires it to advise on the ‘suitability of ADR processes for particular client groups and the accessibility of alternative dispute resolution services.’ In the past, it has made general recommendations on how ADR processes and services should take account of the needs of diverse groups in the community. Its 2003 work plan identified the need to inform itself of the particular needs of Indigenous people who use ADR processes and services.

After initial research in this area, Council became aware of the large number of similar initiatives being taken by other organisations. At its September 2002 meeting, NADRAC met with a team from the Dispute Management Centre at the University of Queensland, which was undertaking a research project into Indigenous ADR. NADRAC has also had discussions with the Australian Institute of Aboriginal and Torres Strait Islander Studies in relation to a dispute resolution project being undertaken by the Institute.

NADRAC’s meeting in Alice Springs in June 2003 provided an excellent opportunity to meet directly with a wide range of Indigenous with Indigenous people and agencies involved in ADR. Members met with the Family Court’s Indigenous Family Consultants and with the Central Australian Aboriginal Legal Aid Service. A consultative forum on Indigenous ADR was also held on 19 June 2003.

NADRAC saw the Alice Springs forum as a pilot to future such activities and, as a result of the success of that forum, planned to hold consultative forums with Indigenous people at its future meetings. The aims of such forums would be for NADRAC to:

- learn about ADR practices in Indigenous communities, including what has and has not worked
- gain the ideas of Indigenous people on ADR issues examined by NADRAC, and
- work with people on developing future strategies for improving the delivery of ADR services to Indigenous people.
Technology and ADR

NADRAC continued a watching brief in relation to developments in the use of information technology and ADR. The secretariat attended government interagency meetings on e-commerce liaised with the staff of the OECD who had been examining on-line ADR. NADRAC also took an interest in a study into on-line ADR conducted for the Victorian Department of Justice by the University of Melbourne. NADRAC noted that the study made extensive reference to NADRAC’s previous work on this topic.

ADR and Insurance

NADRAC noted the complex issues surrounding public liability and medical indemnity insurance and the potential role that ADR could play within a package of possible legal reforms by States and Territories. NADRAC was continuing to monitor developments in this area.

4.5 Improving ADR research, evaluation and data collection

Key issues include improved data collection, particularly on the use of ADR in courts and in other settings, and the development of standards for statistics.

Strategies

- Update published statistics on ADR
- Conduct an ADR research round table to:
  - enhance ADR research effort, and
  - develop advice and guidelines on ADR research, evaluation and data collection.

Progress in 2002–2003

Data collection


Round table on ADR research

NADRAC held a national round table on ADR research in Melbourne in February 2003. The round table involved people engaged in ADR research, evaluation and data collection, as well as agencies that play a lead role on performance measurement and program evaluation. 51 people attended. NADRAC prepared a background paper which was provided to participants prior to the round table.
The objectives of the round table were to:

- identify strategies for improving the quality and consistency of ADR research, evaluation and data collection
- maximise the impact current research effort through sharing information about current projects and approaches and developing links among those engaged in ADR research, and
- make suggestions on good practice in ADR research evaluation and data collection, which could form the basis for a NADRAC guide or paper on this issue.

Notes from the round table were subsequently distributed to participants. Feedback from the participants was extremely positive and, as a result of the event’s success, it was proposed to hold a second research round table in 2004.

Resource paper on ADR research

NADRAC also agreed that the outcomes and comments from the round table, along with other relevant material, would be included in a resource paper on ADR research. The paper would assist those conducting or commissioning research or evaluation on ADR. At the end of June 2003, substantial progress had been made in drafting this paper.
5. Project committees

The following committees were formed to oversee the projects outlined above. Committees generally consult by e-mail or teleconference, although face to face meetings are also held where appropriate.

<table>
<thead>
<tr>
<th>Members</th>
<th>Terms of reference</th>
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<tbody>
<tr>
<td><strong>Statutory provisions for ADR</strong></td>
<td></td>
</tr>
<tr>
<td>Ian Govey (convenor)</td>
<td>This committee will aim to develop appropriate formulations for statutory provisions covering ADR. The committee will work with the ADR Committee of the Law Council of Australia and will:</td>
</tr>
<tr>
<td>Laurence Boulle</td>
<td>• continue to develop a database of Commonwealth statutory provisions relating to ADR</td>
</tr>
<tr>
<td>John Hannaford</td>
<td>• consider the feasibility of extending this exercise to State and Territory legislation and to case law, and</td>
</tr>
<tr>
<td>Norah Hartnett</td>
<td>• prepare recommendations on means for bringing about greater clarity and consistency in ADR statutory provisions.</td>
</tr>
<tr>
<td>Law Council members: Mary Walker</td>
<td></td>
</tr>
<tr>
<td>Michael Hollingdale</td>
<td></td>
</tr>
<tr>
<td><strong>ADR Terminology</strong></td>
<td></td>
</tr>
<tr>
<td>Warwick Soden (convenor)</td>
<td>This committee aims to improve the consistency of terminology surrounding ADR processes. Such consistency underpins NADRAC’s advice in other policy areas, including promoting the appropriate use of ADR, standards and advice on PDR provisions in the Family Law Act. The committee will:</td>
</tr>
<tr>
<td>Helen Bishop</td>
<td>• consider the responses to the terminology discussion paper</td>
</tr>
<tr>
<td>Mary Edmunds</td>
<td>• conduct other consultations if appropriate</td>
</tr>
<tr>
<td>Alan Campbell</td>
<td>• produce a ‘glossary of terms’ for the NADRAC web-site</td>
</tr>
<tr>
<td>Ian Govey</td>
<td>• consider the development of information material directed to consumers of ADR services, and</td>
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<td></td>
<td>• formulate recommendations on appropriate terminology.</td>
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</tbody>
</table>
### Family Law Primary Dispute Resolution (PDR)

<table>
<thead>
<tr>
<th>Norah Hartnett (convenor)</th>
<th>This committee will focus on issues relating to Primary Dispute Resolution (PDR) within the family law system, including developments arising out of the report of the Family Law Pathways Advisory Group, the proposed Quality Framework for PDR services and terminology for PDR within the Family Law Act. The committee will monitor developments and draft advice on proposed reforms in the family law system.</th>
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<tbody>
<tr>
<td>Alan Campbell</td>
<td></td>
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<tr>
<td>Ian Govey</td>
<td></td>
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<tr>
<td>Lynn Stephen</td>
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### Referral to ADR

<table>
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<tr>
<th>Alan Campbell (convenor)</th>
<th>This committee will aim to provide guidance to referral agencies on appropriate referral practices. The committee will:</th>
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</thead>
<tbody>
<tr>
<td>Mary Edmunds</td>
<td>• continue AIJA/NADRAC preliminary research project on criteria for court referral to ADR (by Kathy Mack)</td>
</tr>
<tr>
<td>Warwick Soden</td>
<td>• produce a joint AIJA/NADRAC issues paper in relation to research into criteria for judicial referral to ADR</td>
</tr>
<tr>
<td>Tania Sourdin</td>
<td>• identify opportunities for more comprehensive research on this topic</td>
</tr>
<tr>
<td>Lynn Stephen</td>
<td>• consider broader issues concerning ADR referral, in light of the above research, and</td>
</tr>
<tr>
<td></td>
<td>• consider the need for, and nature of, a guide or guides to ADR referral.</td>
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</table>

### ADR Awareness

<table>
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<tr>
<th>John Hannaford (convenor)</th>
<th>This committee will undertake intensive work in organising the conference, to be held on 4–5 September 2003. An advance flyer will be disseminated in February and March 2003, and registrations will be accepted from that date. There will also be considerable follow up work required to evaluate and report on the outcomes of the conference and to consider future activity on promoting ADR in business.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ian Govey</td>
<td></td>
</tr>
<tr>
<td>Laurence Boulle</td>
<td></td>
</tr>
<tr>
<td>Tania Sourdin</td>
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</tr>
</tbody>
</table>
### Indigenous ADR

Helen Bishop (convenor)  
Mary Edmunds  
Barbara Filipowski  
John Spender  

This committee aims to assist NADRAC to:  
- learn about ADR practices in Indigenous communities, including what has and hasn’t worked  
- gain the ideas of Indigenous people on ADR issues examined by NADRAC, and  
- work with people on developing future strategies for improving the delivery of ADR services to Indigenous people.

### Technology and ADR

Barbara Filipowski (convenor)  
John Hannaford  
Laurence Boulle  
John Spender  

This committee will consider general principles for the use of technology in ADR, as well as disputes arising out of the use of technology, especially e-commerce. The committee will:  
- consider comments on a draft paper on good practice principles on technology in ADR  
- monitor developments in relation to the use of ADR in e-commerce, including the work of Treasury’s Consumer Affairs Division, the Expert Group on Electronic Commerce and relevant OECD working groups, and  
- identify opportunities for making greater use of the Internet for providing information about ADR, including consultation with ILSAC on a site on International Commercial Dispute Resolution.

### ADR Research, evaluation and data collection

Tania Sourdin (convenor)  
Warwick Soden  
Helen Bishop  
Norah Hartnett  

This committee aims to enhance ADR research effort and improve the quality and consistency ADR data collection especially in courts and tribunals. The committee will:  
- convene a round table on ADR research, evaluation and data collection  
- identify opportunities for continued liaison with key agencies involved in ADR research  
- develop a guide to ADR research and data collection, and  
- update ADR statistics.
### Quality and accreditation

<table>
<thead>
<tr>
<th>John Spender (convenor)</th>
<th>Alan Campbell</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tania Sourdin</td>
<td>Laurence Boulle</td>
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</tbody>
</table>

This committee will:
- prepare an options paper on models of accreditation and accreditation bodies
- consult with ADR organisations on these options, and
- plan a national workshop or round table on this issue.

### ADR and insurance

<table>
<thead>
<tr>
<th>Barbara Filipowski (convenor)</th>
<th>Laurence Boulle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tania Sourdin</td>
<td>Norah Hartnett</td>
</tr>
<tr>
<td>Ian Govey</td>
<td>Warwick Soden</td>
</tr>
</tbody>
</table>

This committee will
- monitor developments in relation to the role of ADR in the insurance industry, and
- respond as appropriate to requests for advice from Government agencies.
### 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)

<table>
<thead>
<tr>
<th>Date</th>
<th>Matter</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 2003</td>
<td>Report of submissions to terminology paper*</td>
<td>Consolidates and summarises the submissions received in response to NADRAC’s ADR terminology discussion paper</td>
</tr>
</tbody>
</table>
| April 2003  | Family Law Rules revisions Submission to the Family Court of Australia * | • The Rules should be user friendly  
• The proposed practice manual should take into account the needs of agencies apart from the Family Court  
• The rules should specify ‘pre-action’ procedures  
• Consistent terminology is required  
• Supports criteria for ordering family reports  
• Supports costs consequences flowing from genuine efforts to settle property matters                                                                 |
| April 2003  | Family Law Council PDR paper Comments on draft paper                   | • Distinctions between mediation and counselling, and between models of mediation  
• Need to clarify PDR in legal aid context                                                                                                                                                    |
| April 2003  | Australian Standard on the prevention, handling and resolution of disputes Comments on proposed revision to AS 4608-1999 | Interim response:  
• No objection to revision  
• NADRAC report on standards emphasises consultation, review and evaluation of standards, as well as link to other standards.                                                                 |
| March 2003  | ADR research, evaluation and data collection Background paper*         | Document produced to assist NADRAC round table on ADR research held on 21 February 2003                                                                                                               |
| December 2002 | UNCITRAL Conciliation Rules Letter to Attorney-General                  | Expresses concern about UNCITRAL’s International Commercial Conciliation Rules Article 8, which, contrary to Australian practice, provides that information divulged in private session may be provided to the other party unless specified otherwise. |
| November 2002 | Judicial education Letter to Director of Judicial College of Australia | Emphasises need for judicial education on ADR                                                                                                                                                    |
| October 2002 | Amendments to 19N of Family Law Act Brief comments to Family Law and Legal Assistance Division | • Supports in principle the proposal to exempt child abuse issues from inadmissibility provisions  
• Proposes that exemption could be extended in order to be consistent with practitioners’ duty of care obligations  
• Suggests technical changes                                                                                                                                                    |
| September 2002 | Family Court Violence Policy Submission to Court’s Family Violence Committee * | Matters to be taken into account in a policy are:  
• the nature of family violence  
• the risks and impacts of family violence  
• the appropriateness of PDR processes in cases involving violence, and  
• the need for a systematic approach.                                                                                                                                        |
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Description</th>
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<tbody>
<tr>
<td>September 2002</td>
<td>Review of Federal Magistrates Service Letter to working group</td>
<td>Stresses importance of data collection</td>
</tr>
<tr>
<td>August 2002</td>
<td>National research priorities Submission to the Department of Education, Science and Training*</td>
<td>Nominates ADR as a thematic priority for national research.</td>
</tr>
<tr>
<td><strong>Previous years</strong></td>
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<tr>
<td>June 2002</td>
<td>ADR terminology (Discussion paper)*</td>
<td>Poses a series of questions about how terms are used, and should be used, in ADR. Submissions invited by 31 December 2002</td>
</tr>
<tr>
<td>May 2002</td>
<td>ADR statistics (Compilation of published statistics on ADR in Australia)*</td>
<td>Intended as a resource document to guide consideration of ADR data collection</td>
</tr>
</tbody>
</table>
| April 2002   | Government use of ADR (Letter to Attorney-General)                                  | • Need for reference to ADR and to ADR standards in the Legal Service Direction  
|              |                                                                                    | • Need for ADR clauses in contracts for provision of good and services to Commonwealth agencies |
| March 2002   | What is ADR? (Brochure on ADR terms)*                                              | Simplifies earlier definitions paper                                           |
| March 2002   | Dispute Resolution and Information Technology (Draft guidelines)*                   | • Take into account impact and potential of technology                       
|              |                                                                                    | • Consider accessibility, fairness, effectiveness, cost and legal issues      
|              |                                                                                    | • Manage risks associated with delivery of ADR service on-line               
|              |                                                                                    | • Need to match technology to needs of disputes and parties                  
|              |                                                                                    | • Develop service and practitioner standards to take account of use of technology |
|              |                                                                                    | • Consider use of technology in other areas, including marketing of ADR, information management, research, education and professional development |
|              |                                                                                    | • Apply change management strategies when introducing new technology        |
| Feb. 2002    | Mediation competencies (Letter to Community Services and Health Training Australia) | General comment on draft qualification and competencies in community mediation:  
|              |                                                                                    | • Consultation                                                               
|              |                                                                                    | • Diversity                                                                  
|              |                                                                                    | • Use NADRAC’s standards within evidence guides                              |
| February 2002| Recommendations of the Family Law Pathways Advisory Group (Letter to Attorney-General) | • Supports the direction of the FLPAG’s report                              
|              |                                                                                    | • Need for well researched an targeted promotion of non-adversarial approaches |
|              |                                                                                    | • Reference to Quality Framework Submission (2002–01)                        
|              |                                                                                    | • Support for case assessment, but noting complexity of the task             
|              |                                                                                    | • Need for consistent terminology (refers to 2001-11)                       
<p>|              |                                                                                    | • Need for evaluation of innovative models of service delivery                |</p>
<table>
<thead>
<tr>
<th>Date</th>
<th>Document Title</th>
<th>Key Points</th>
</tr>
</thead>
</table>
| Jan. 2002 | PDR Quality Framework (Submission to Attorney-General’s Department in relation to consultation paper proposing a quality framework for PDR service under the Family Law Act)* | - Support for overall goals of proposal  
- Avoid too much emphasis on organisational performance at expense of practitioner competence  
- Need to link with other professional/service groupings  
- Take into account elements in an appropriate code of practice as outlined in NADRAC’s standards report  
- Some additional standards required vis a vis family services, especially family violence/child abuse  
- Give greater prominence to complaint handling  
- Keep ‘essential’ obligations and responsibilities within the regulations themselves  
- Need to clarify implementation issues - costs, compliance, infrastructure. |
| Dec. 2001 | ADR In E-Commerce (Submission to Expert Group on e-commerce re discussion paper on Dispute Resolution in e-commerce)* | - Need for consultation and coordination in e-commerce ADR  
- Consistency in terminology required  
- Independent research and evaluation of on-line ADR is vital  
- Intake, assessment and preparation processes are essential in light of role of third parties (eg credit providers), dispute dynamics, power balance, representation; nominal fess may not be appropriate  
- Important to match the communication medium to the parties and to the dispute |
| Nov. 2001 | Family Law Act terminology (Letter and background paper on the need to review the PDR provisions of the Family Law Act and Federal Magistrates Service Act) | - Need for consistency in PDR terminology  
- Need for a review of the FLA  
- Current provisions need to reflect current PDR practices  
- Statutory protections also require review |
| August 2001 | Definitions (Brief discussion paper on website on need for common language in ADR) | Presents arguments for and against consistent terminology in ADR and asks for comment |
| August 2001 | Franchising Code of Conduct (Letter to Office of Small Business) | Need to address termination issues, and resolve ambiguity surrounding ‘imminence of resolution’  
Address issue of site of mediation, especially in context of on-line ADR |
| May 2001 | ADR/PDR terminology (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 | Federal Magistrates Service Draft Rules (Submission to Registrar of Federal Magistrates Service) | Reiterates previous advice  
See below |
<table>
<thead>
<tr>
<th>April 2001</th>
<th>Standards for ADR (Report to Attorney-General A Framework for ADR Standards)*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Recommends framework (= guidelines for developing standards, a code and enforcement of code by appropriate means); recognise diversity</td>
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<tr>
<td></td>
<td>• Service providers to adopt and comply with code of practice</td>
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<td></td>
<td>• Service providers to have a complaints mechanism</td>
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<td></td>
<td>• Examine feasibility of ADR Ombudsman</td>
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<td></td>
<td>• Monitor complaints</td>
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<td>• Compliance based predominantly on self-regulation</td>
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<td>• Compliance with code of practice as part of Commonwealth contracts</td>
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<td>• Other governments also to require compliance with a code</td>
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<td></td>
<td>• Consumer education activities to encourage code</td>
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<td></td>
<td>• Mandating bodies give special attention to quality</td>
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<td></td>
<td>• Review of statutory provision</td>
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<td></td>
<td>• Determine need for accreditation on a sector by sector basis</td>
</tr>
<tr>
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<td>• Principles suggested for accreditation of practitioners</td>
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<td>• Accrediting bodies develop mutual recognition</td>
</tr>
<tr>
<td></td>
<td>• Selection process to be fair, transparent, effective</td>
</tr>
<tr>
<td></td>
<td>• Engagement of practitioner based on knowledge, skills and ethics, not necessarily tertiary qualifications</td>
</tr>
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<td></td>
<td>• Training providers inform participants of expected outcomes</td>
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<td>• Training take account of (framework); be performance based, and use best practice learning strategies</td>
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<td>• Explore peak body</td>
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<td>• Resources commensurate with risks and benefits</td>
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<td></td>
<td>• Improved data collection</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Jan. 2001</th>
<th>On-line ADR (Background paper)*</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
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<tr>
<td>Dec. 2000</td>
<td>Criteria for referral to ADR</td>
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<td>Letter of advice to Federal Magistrates Service</td>
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<td>May 2000</td>
<td>Administrative Review Tribunal</td>
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<td>Letters of advice to Attorney-General's Department</td>
</tr>
<tr>
<td>June 2000</td>
<td>ADR data collection in courts</td>
</tr>
<tr>
<td>March 2000</td>
<td>Use of term mediation</td>
</tr>
<tr>
<td></td>
<td>Letter to Family Court of Australia</td>
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<tr>
<td>Date</td>
<td>Event</td>
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<td>----------------------------------------------------------------------</td>
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</tbody>
</table>
| March 2000 | Franchising Code of Conduct Submission to Franchising Policy Council*| - Recommend research and data collection to establish benchmarks against which information can be measured  
- The code provisions should be kept under review  
- There is value in making parties participate fully but do not favour the term ‘in good faith’  
- Oppose requirement for mediator to certify that parties made a genuine attempt to mediate  
- Code to refer to mediation as the principal method of DR  
- Add a ‘case stated’ option for a quick, relatively inexpensive and final decision  
- Commonwealth could require parties to mediate before enforcing the provision of a franchising agreement  
- Recommend use of standards |
| March 2000 | Standards for ADR Discussion paper The Development of Standards for ADR*| - Proposed framework for ADR standards  
- Asked 70 questions for comments  
- See April 2001 – final report |
| June 2000  | Parenting Plans Joint Letter of Advice to Attorney-General (with Family Law Council)* | - Encourage use of parenting plans, and use consent orders where enforceability is sought  
- Repeal registration provisions  
- Encourage an integrated parenting plans/consent order package |
| Dec. 1999  | Federal Magistrates Service Rules and Regulations Part 2 Report to Attorney-General* | - Provide information/education about ADR through information sessions, brochures, initiating documents  
- Develop and publish guidelines (indicators/contraindicators) for referral to ADR  
- ADR practitioner has an obligation to assess for suitability  
- Approval of ADR service providers by Attorney-General's Department (quality approval process) as opposed to Family Law Regulations for family and child mediators – link to immunity and complaints process  
- Encourage parties to go to Court to obtain and referral order to ADR  
- Court personnel should not automatically be qualified as ADR practitioners  
- Need for standards referral orders (providing certain powers and obligations of ADR practitioner)  
- Incorporate definitions into rules of court  
- Immunity/confidentiality should not prevent consumer redress  
- Regulations should specify that ADR service providers have a complaints mechanisms  
- ADR practitioner should report back to court on termination (defined headings, but not willingness to cooperate)  
- Evaluate ADR services  
- Cost to take account of ADR costs, and refusal to attend ADR  
- Court should scrutinise ADR agreements |
<table>
<thead>
<tr>
<th>Date</th>
<th>Source</th>
<th>Provides practical guidelines for managing diversity</th>
</tr>
</thead>
</table>
| August 1999 | Diversity ‘A Fair Say’ Public guide to managing differences in mediation and conciliation* | • ADR should be an integral part of the Court  
• Legislation should refer to DR, not ADR processes  
• Focus on procedural flexibility  
• ADR not a replacement for judicial adjudication  
• Emphasise proper assessment, referral and quality  
• Set out objectives in a legislative provision  
• Legislation should name each DR process  
• Use the NADRAC definitions and consistent terminology  
• Court to have power to make rules about procedure  
• Access to legal representation/advice/other support  
• Support a diversity of providers of DR services  
• Legislation should address the issue of standards  
• Court to use list of appropriate DR providers  
• Judge not to adjudicate disputes where s/he has done ADR  
• Court to make regulations which set Court ADR fees  
• Duty to advise clients of the availability of DR processes  
• Require provision of written information about DR  
• All/any part of a dispute to be referrable to DR process  
• Range of DR processes to be available at any stage  
• Mandatory referral by qualified assessor is acceptable  
• Court evaluation of all its DR processes is vital  
• DR providers to have similar immunity to judges  
• Implement a complaints procedure (against DR providers)  
• Court to review agreement in limited circumstances  
• Court to be able to terminate a non-judicial DR process  
• Court to determine a question of fact/law to assist ADR  
• Dispute resolver to provide limited reports to Court  
• Non-compliance/refusal to provide essential information  
• DR providers-appropriate powers to facilitate outcomes  
• Magistrates should have substantial experience in ADR  
• Legislative protection should not extend to pre-filing  
• Court to make rules on a simple, inexpensive process for initiating action within the court without pleadings |
<p>| March 1999  | Federal Magistrates Service – Act Part 1 Report to Attorney-General* |  |</p>
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Key Points</th>
</tr>
</thead>
</table>
| Feb. 1999 | Law Reform Commission of Western Australia Review of the Civil and Criminal Justice System Response to Consultation Paper on The Use of Court-based or Community Alternative Dispute Resolution Schemes and Alternative Forums for Adjudication | • Importance of a range of DR processes  
• Importance of data collection on DR  
• Confidentiality of court files and details of DR attendance  
• Importance of criteria for appraisal/screening of each case  
• Support court with multiple dispute resolution ‘doors’  
• The ADR process should be adaptable to the particular case  
• Timing of when ADR might be used  
• More information about the court and ADR  
• Incentives for disputants to use ADR  
• Need to create a change of legal practitioner culture  
• The state should bear the costs of ADR in the court system  
• Parties should use external ADR at their own cost  
• Payment for court-annexed ADR is a complex issue  
• Appropriate training and qualification standards  
• A judicial officer who has acted as an ADR practitioner should be disqualified from subsequently adjudicating the same dispute  
• ADR to proceed on a ‘without prejudice’ basis  
• Limited statutory duty of confidentiality Supported the thrust of the recommendations, but concerned that some recommendations impractical and raise resource implications; need to give attention to processes of implementation |
| Feb. 1999 | Small Business Access to the Legal System  
Advice to Attorney-General’s Department in response to the Suggestions Paper of the Review of Small Business Access to the Legal System | |
| Jan. 1999 | Workplace mediation Submission to Department of Workplace Relations and Small Business in response to Ministerial Discussion Paper: Approaches to Dispute Resolution: A Role for Mediation? | • Distinguish mediation from conciliation in industrial relations  
• Need for assessment and screening of matters for suitability  
• Proceed to arbitration or adjudication after unsuccessful mediation (ie not proceed to conciliation)  
• Mandatory mediation acceptable in certain circumstances (a gatekeeper required)  
• Public and private providers should be able to deliver mediation services; mediators should have working knowledge of the legislation |
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<tr>
<th>Date</th>
<th>Source</th>
<th>Key Points</th>
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- Need for a variety of DR processes  
- Flexibility importance  
- Gatekeeping and assessment is critical (criteria offered)  
- Need to properly design the ADR system  
- Need to establish evaluation criteria for ADR  
- Timing of ADR important (and early intervention may be appropriate)  
- Avoid blurring adjudication with facilitative and advisory processes  
- Supports ADR training for judges  
- ADR should not be used to reduce funding for courts  
- Drew attention to diversity paper in relation to NNTT  
- Safeguards re compulsions in ADR (assessment, etc.)  
- Standards should include both neutrality and impartiality  
- Limit immunity  
- Conditions suggested for confidentiality  
- Standards – await NADRAC report  
- Lawyers should advise clients of ADR  |
| April 1998 | Small Business Department of Workplace Relations and Small Business - Response to ADR Information Kit for Small Business | Editorial suggestions  |
| April 1998 | Standards Australia Comment on the proposed Standard on Dispute Resolution | - Suggests amendments to proposed criteria for ADR processes  
- Makes a series of editorial suggestion  |
| March 1998 | Benchmarks 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 | Need to provide information to small business via informal networks  
Specific recommendation on additions to proposed kit  |
| Dec. 1997 | Primary Dispute Resolution Attorney-General’s Department – Response to Discussion Paper on Delivery of PDR Services in Family Law | - Confine term ‘Primary Dispute Resolution’ to mediation and conciliation  
- Support choice of DR service, accessibility, efficiency, accountability, quality, integrated service panning and policy development, diversion from litigation  
- Raises issues of accountability in context of outsourcing  
- Raises issues about the functions of a proposed Office of Family Relationship Services |
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<th>Date</th>
<th>Source</th>
<th>Identifies challenges for ADR services in responding to diversity and suggests the following be addressed:</th>
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| Nov. 1997  | Diversity Discussion Paper on Issues of Fairness and Justice in Alternative Dispute Resolution* | • Dispute resolution system design  
• Training  
• Access to ADR services  
• Cost  
• Social trends of public concern and interest  
• Links with associated services  
• Recruitment of members of minority groups  
• Use of advocates, legal representatives, interpreters, etc.  
and proposes practical guidelines concerning assessment, and modifications and accommodations. |
| Nov. 1997  | Australian Law Reform Commission Review of the Adversarial System of Litigation - Response to Issues Paper No 20 Alternative or Assisted Dispute Resolution | • Persuasion of parties to use ADR - unlikely to be appropriate by judicial officers, appropriate for non-judicial officers – early in litigation process  
• Mandatory mediation requires certain conditions and safeguards (including ‘gatekeeper’’)  
• Supports diversity of ADR providers  
• Generally court staff should not move from one DR process to another  
• Examine immunity – ensure consumer redress possible  
• Respect party self determination, but also identify criteria for referral to ADR  
• Need for better ADR data collection |
| March 1997 | Family Law Regulations Report to the Attorney-General Primary Dispute Resolution in Family Law - on Part 5 of the Family Law Regulations* | • Compliance with regulation only for those seeking protection of the Act  
• Amend immunity to enable consumer recourse  
• Retain tertiary qualification requirements for the present, but consider recognition of specific family law experience in the future  
• Recognise accountants (under reg 60)  
• Include ‘admitted’ legal practitioner (eg Clerkships, not university educated)  
• Limited authorisation scheme for ATSI mediators  
• Provide means to assist ATSI people gain appropriate tertiary qualifications  
• Limited authorisation scheme for NESB mediators  
• Improve access to tertiary courses  
• Amend subregulation 60(3) – mediation of that kind to general reference to mediation of family disputes  
• Provide authorisation scheme for ‘true grandparents’ of mediation  
• Remove subregulation 60(4)  
• Amendment to wording – sub para 60(3)(b)(ii)  
• Require at least 3 days specific training in family mediation issues  
• Independent supervisors should be experienced in family mediation  
• Include as supervisors people who are eligible for membership of relevant bodies (ie not necessarily current members) |
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<th>Month</th>
<th>Description</th>
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<tbody>
<tr>
<td>March 1997</td>
<td>ADR Definitions Paper on Alternative Dispute Resolution Definitions*</td>
</tr>
<tr>
<td>Feb. 1997</td>
<td>Authorisation of Family and Child Counsellors</td>
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<td>Letter to Attorney-General’s Department in response to request for advice on interim arrangements for the authorisation of Family and Child Counsellors</td>
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<tr>
<td>Jan. 1997</td>
<td>Benchmarks for Consumer Dispute Resolution Schemes</td>
</tr>
<tr>
<td>Nov. 1996</td>
<td>Government Service Charter Initiative</td>
</tr>
<tr>
<td>Oct. 1996</td>
<td>Youth Homelessness Submission to Youth Homelessness Taskforce</td>
</tr>
<tr>
<td>October 1996</td>
<td>Family Services Submission to Parliamentary Committee into Aspects of Family Services</td>
</tr>
<tr>
<td>June 1996</td>
<td>Uniform succession laws Submission to Queensland Law Reform Commission</td>
</tr>
</tbody>
</table>

- 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
- Remove requirement for written statement and provide that information is provide as appropriate to the case; and specific changes recommended to the nature of information provided
- Define mediation and conciliation
- Examine public interest
- Carefully consider whether officers from within the police force be used as mediators
- Need for adequate training
- Relate ADR to good management practices
- Consider Standards Australia AS 4269 1995
- Provide time limits for processes, with flexibility
- ADR should not be considered in some cases – this to be determined on an individual – not ‘type’ basis
- ADR should not be compulsory for complainants, but possibly for members of police force
- Mandatory mediation may be appropriate in some circumstances; a properly trained ‘gatekeeper’ is required, and criteria applied for referral.
- Mediators should have the time appropriate to meet the needs of the parties.
- Not appropriate for preventive family services to be provided by the courts
- Provide easy access to a range of DR services
- Monitor impact of any new fees for service (for family court counselling)
- Attend to issue of family violence
- Support provision of quality mediation services provided by State Governments agencies
- Reforms to succession laws should make reference to ADR processes in relation to disputes over estates.
7. Financial Report

NADRAC’s expenditure is contained within Outcome 1 (an equitable and accessible system of federal civil justice), Output 1.1 (legal services and policy advice on courts and tribunals, alternative dispute resolution, administrative law, human rights, evidence and procedure) of the Attorney-General’s Department's audited financial statements published in the Department’s Annual Report.

**SALARIES**
- Secretariat salaries: $129,995
- Sitting fees: $32,788
- Total salaries: $162,783

**ADMINISTRATION**
- Training and conferences: $1,000
- Venue hire/incidentals: $265
- Meeting costs: $4,176
- Domestic airfares: $24,466
- APS accommodation: $397
- Airline club: $38
- Travel allowance: $13,180
- Car/taxi hire: $5,412
- Car parking: $235
- Stationery: $67
- Printing: $5,116
- Communication charges: $312
- Total administration: $54,664

**TOTAL EXPENDITURE**: $217,447

Note: the above figures do not include income and expenditure relating to NADRAC’s conference on Business ADR, which will be finalised in the 2003 – 2004 financial year.