National Alternative Dispute Resolution Advisory Council


Canberra
The National Alternative Dispute Resolution Advisory Council (NADRAC) provides independent expert advice to the Attorney-General on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision, and promotes the use and raises the profile of alternative dispute resolution.

For more information contact the NADRAC Secretariat at:

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Phone 02 6250 6272 Fax 02 6250 5980
e-mail nadrac@ag.gov.au

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

The past year has been a very exciting year for alternative dispute resolution in Australia with the mediation sector seeing the establishment of the National Mediator Accreditation System on 1 January 2008. This is an industry based scheme which relies on voluntary compliance by mediator organisations that agree to accredit mediators in accordance with the requisite standards. NADRAC has long been advocating the implementation of this system and is pleased to see it come to fruition.

This financial year, NADRAC also continued to pursue its core task of advising the Attorney-General, the Honourable Robert McClelland MP, on the development of high quality, economic and efficient ways of resolving or managing disputes without the need for judicial decision and raising the profile of alternative dispute resolution.

NADRAC completed a series of projects during the year. Highlights include:

- hosting the historic first National Mediator Accreditation Committee meeting in Canberra, providing advice on the structure of the Committee’s four working groups and providing ongoing support for these working groups
- providing support to National Mediation Conferences Limited to apply for a grant to the Attorney-General to establish a secretariat to support the future work of the National Mediator Accreditation Committee.
- convening the ADR Research Forum in Melbourne to discuss recent developments in alternative dispute resolution and research
- provision of comments to the Attorney-General’s Department on the Government response to the Older People and the Law report
- making submissions to the Parliament of Victoria Law Reform Committee’s ADR inquiry
- the launch of an enhanced NADRAC website
- making a submission to the Attorney-General’s Department on the draft National Indigenous law and Justice Strategy paper
- making a submission in response to the Australian Law Reform Commission Discussion paper 72 Review of Australian Privacy Law, and
- convening, in conjunction with the Office of Legal Services Coordination, the ADR in Government Forum in Canberra

The Attorney-General recently issued NADRAC with a reference on ADR in federal civil proceedings. NADRAC has been asked to enquire into and identify strategies for litigants, the legal profession, tribunals and courts to remove barriers from and provide incentives to ensure greater use of appropriate dispute resolution options as an alternative to civil proceedings and during the court or tribunal process. Mr McClelland also sought advice on initiatives governments might take to support the recommended strategies, including legislative action and asked that the report be completed by 30 September 2009. The Council will call for submissions early next year.
NADRAC has undergone some changes to its membership. The past year saw the departure of three Council members, Ms Josephine Akee AM, Ms Lynn Stephen and Mr John Spender QC. The Council would like to take this opportunity to express its gratitude to Josephine, Lynn and John for the exceptional contributions they made to NADRAC’s work.

Five new members were appointed to NADRAC during the year. I am delighted to welcome Professor Nadja Alexander, Mr John Hodgins, Mr Tom Howe QC, Mr Stephen Lancken and Ms Lindsay Smith to NADRAC whose experience and expertise in ADR will greatly assist NADRAC’s deliberations. I also congratulate Mr Warwick Soden and Professor Tania Sourdin on their reappointment to NADRAC.

Finally, I want to express my thanks to all NADRAC Members and Secretariat staff for their efforts in furthering the Council’s work.

Justice Murray Kellam AO

Chair
2. About NADRAC

Establishment

NADRAC was established in 1995 to provide independent advice to the Australian Attorney-General on policy issues relating to alternative dispute resolution (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, *Access to Justice - an Action Plan.*

Charter

1) The National Alternative Dispute Resolution Advisory Council (NADRAC) is an independent advisory council charged with:

   a) providing the Attorney-General with coordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving or managing disputes without the need for a judicial decision, and

   b) promoting the use and raising the profile of alternative dispute resolution (ADR).

2) The issues on which NADRAC will advise on under paragraph 1(a) include the following:

   a) minimum standards for the provision of ADR services

   b) minimum training and qualification requirements for ADR practitioners, including the need, if any, for registration and accreditation of practitioners and dispute resolution organisations

   c) appropriate professional disciplinary mechanisms

   d) the suitability of ADR processes for particular client groups and for particular types of disputes, including restorative justice and ADR in the context of criminal offences.

   e) the quality, effectiveness and accountability of Australian Government ADR programs

   f) ongoing evaluation of the quality, integrity, accountability and accessibility of alternative dispute resolution services and programs

   g) programs to enhance community and business awareness of the availability, and benefits, of ADR services

   h) the need for data collection and research concerning ADR and the most cost-effective methods of meeting that need, including by courts and tribunals and

   i) the desirability and implications of the use of ADR processes to manage case flows within courts and tribunals.
3) In considering the question of minimum standards, the Council will examine the following issues:
   a) the respective responsibilities of the courts and tribunals, government and private and community sector agencies for the provision of high quality ADR services
   b) ethical standards for practitioners
   c) the role of lawyers and other professional advisers in ADR
   d) legal and practical issues arising from the use of ADR services, such as the liability or immunity of practitioners, the enforceability of outcomes and the implications of confidentiality, and
   e) the accessibility of ADR services.

4) In promoting the use and raising the profile of ADR under paragraph 1(b), the Council will, as appropriate:
   a) participate in forums, conferences and meetings of professional associations
   b) facilitate ADR research and be involved in research conferences
   c) develop and improve relationships with educational institutions involved in legal, judicial or dispute resolution training
   d) pursue opportunities to propose improvements to ADR processes
   e) assist Government agencies to use ADR and to encourage them to make ADR a part of their funded programs
   f) support Australia’s capacity building efforts in relation to ADR in the region, and
   g) prepare educational materials about ADR.

5) 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.

6) 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 ADR. A copy of any such submission must be provided to the Attorney-General as soon as possible after the submission is dispatched.

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

8) 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.

9) The Council will provide the Attorney-General with a report of its operations as soon as possible after 30 June each year.
3. 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. Members come from around Australia and bring to the Council a broad range of experience in the area of dispute resolution. The membership as at 30 June 2008 was as follows:

Membership as at 30 June 2008

<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>Justice Murray Kellam AO</td>
<td>Chair</td>
<td>1 January 2004</td>
<td>31 December 2009</td>
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<tr>
<td>Professor Nadja Alexander</td>
<td>Member</td>
<td>19 September 2007</td>
<td>29 August 2010</td>
</tr>
<tr>
<td>Mr Fabian Dixon SC</td>
<td>Member</td>
<td>30 August 2004</td>
<td>29 August 2009</td>
</tr>
<tr>
<td>Mr Ian Govey</td>
<td>ex officio</td>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td>Mr Ian Hanger AM QC</td>
<td>Member</td>
<td>30 August 2004</td>
<td>29 August 2009</td>
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<tr>
<td>Mr Greg Hansen</td>
<td>Member</td>
<td>30 August 2004</td>
<td>29 August 2009</td>
</tr>
<tr>
<td>Ms Norah Hartnett</td>
<td>Member</td>
<td>30 August 2001</td>
<td>29 August 2008</td>
</tr>
<tr>
<td>Mr John Hodgins</td>
<td>Member</td>
<td>28 May 2008</td>
<td>27 May 2011</td>
</tr>
<tr>
<td>Mr Tom Howe QC</td>
<td>Member</td>
<td>28 May 2008</td>
<td>27 May 2011</td>
</tr>
<tr>
<td>Mr Steve Lancken</td>
<td>Member</td>
<td>28 May 2008</td>
<td>27 May 2011</td>
</tr>
<tr>
<td>Dr Gaye Sculthorpe</td>
<td>Member</td>
<td>30 August 2004</td>
<td>29 August 2009</td>
</tr>
<tr>
<td>Mr Lindsay Smith</td>
<td>Member</td>
<td>28 May 2008</td>
<td>27 May 2011</td>
</tr>
<tr>
<td>Mr Warwick Soden</td>
<td>Member</td>
<td>11 August 1998</td>
<td>29 August 2010</td>
</tr>
<tr>
<td>Professor Tania Sourdin</td>
<td>Member</td>
<td>29 April 2002</td>
<td>29 August 2010</td>
</tr>
</tbody>
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Further information about Members is included under Member Profiles in the next page.
Member Profiles as at 30 June 2008

The Hon Justice Murray Kellam AO  
(Chair from January 2004)

The Hon Justice Murray Kellam AO is a Justice of the Court of Appeal, Supreme Court of Victoria. He was formerly a Justice of the Trial Division of the Supreme Court of Victoria, President of the Australian Institute of Judicial Administration and President of the Victorian Civil and Administrative Tribunal. Justice Kellam has been a strong supporter of ADR within the court and tribunal system and led the development of a broad-ranging and innovative ADR program within VCAT. He has undertaken mediation training at Harvard University and has been involved in the delivery of mediation training to the judiciary in Papua-New Guinea and a number of Pacific Island countries.

Professor Nadja Alexander

Professor Nadja Alexander is a Professor of Dispute Resolution at the Australian Centre for Peace and Conflict Studies, University of Queensland and an Adjunct Professor at Murdoch University. Winner of numerous teaching awards, Professor Alexander has widespread experience as a trainer, facilitator and dispute resolution consultant internationally. She has published extensively on negotiation and mediation and is on the editorial boards of prestigious ADR journals in Australia, USA, Germany and Austria. She is a member of the Standards Commission of the International Mediation Institute.

Mr Fabian Dixon SC

Mr Fabian Dixon SC is a barrister in Victoria and Tasmania. He has an extensive background in family law. Mr Dixon is currently the Deputy Chairman of the Australian Advocacy Institute. He was a member of the Family Law Council from 1998-2001, and was a member of a joint NADRAC/Family Law Council Committee which provided advice to the Government on Parenting Plans. He was President of the Law Council of Australia in 1998-99 and President of the Law Society of Tasmania in 1992-93. He was appointed Senior Counsel in 2003.
Mr Ian Govey

Mr Ian Govey is Deputy Secretary, Civil Justice and Legal Services, Commonwealth Attorney-General’s Department. His relevant areas of responsibility within the Department include courts and tribunals, ADR, family law and related services, legal assistance, native title, indigenous law and justice and Commonwealth legal services. Mr Govey has been as an ex officio member of the Council.

Mr Ian Hanger AM QC

Mr Ian Hanger QC is a leading commercial dispute resolution practitioner in Brisbane. He is an accredited ADR specialist with the Bar Association of Queensland and is an Adjunct Professor at the Australian Centre for Peace and Conflict Studies, University of Queensland. Mr Hanger is a Fellow of the Institute of Arbitrators and Mediators Australia and former Director and Queensland Chair of LEADR. He is a member of the Court of Arbitration for Sport, a member of the panel of conciliators for the International Centre for Settlement of Investment Disputes and member of the Law Council of Australia’s ADR subcommittee. He has recently been appointed to the arbitration panel of the Chinese International Economic and Trade Arbitration Commission. Mr Hanger was appointed Queen's Counsel in 1984 and Member in the Order of Australia in 2007.

Mr Greg Hansen

Mr Greg Hansen has practiced as a commercial and personal mediator and has extensive negotiation experience. He was a partner of the Newcastle law firm, Torpey and Hansen, for 12 years. Since retiring from active legal practice, Mr Hansen has been involved in business as a retailer, grazier, vigneron, restaurateur and business consultant. He has been active in community affairs, including as an Alderman and Councillor with Newcastle City Council.
Ms Norah Hartnett

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

Mr John Hodgins

Mr John Hodgins is a magistrate based in Cairns. Prior to his appointment as a magistrate, he was the Chief Executive Officer of Legal Aid Queensland. He was formerly a member of the Steering Committee Reviewing Aboriginal Legal Services, a member of the Family Law Council and a member of the Council of the Australian Institute of Judicial Administration.

Mr Tom Howe QC

Mr Tom Howe QC is the Chief Counsel, Litigation at the Australian Government Solicitor (AGS), where he has worked for the last 22 years. Prior to joining AGS, he worked in private practice and as a solicitor with ACT Legal Aid. He is a member of the Australian Corporate Lawyers Association, the Federal Litigation Section of the Law Council, and the ACT Bar Association.
Mr Stephen Lancken

Mr Stephen Lancken is the Australian Principal of the Trillium Group. He is also an Adjunct Lecturer in Conflict Management at the University of New South Wales. Mr Lancken is a member of the New South Wales Law Society's Dispute Resolution Committee. He is an accredited mediator under the National Mediator Accreditation System and an accredited mediation specialist with the Law Society of New South Wales.

Ms Lindsay Smith

Ms Lindsay Smith is the Executive Manager for the Dispute Resolution Branch of the Queensland Department of Justice and Attorney-General. She was formerly the Coordinator of the Dispute Resolution Branch's Mackay Dispute Resolution Centre. Ms Smith is an accredited mediator with the Queensland Department of Justice and Attorney-General. She is a former conflict resolution consultant at FH Collins Secondary School in Canada and is a former Deputy Principal of Mackay State High School.

Dr Gaye Sculthorpe

Dr Gaye Sculthorpe is a full-time member of the National Native Title Tribunal and mediates native title applications in Queensland, New South Wales and Victoria. She is a member of the Tribunal’s Agreement-Making Strategy Group which produced a guide on mediating native title applications. Dr Sculthorpe is a member of the Australian Heritage Council and has held senior positions at Museum Victoria. She has qualifications in anthropology and history and holds a PhD from La Trobe University in Melbourne. Dr Sculthorpe is a descendant of the Pyemmaidrener people of North Eastern Tasmania.
Mr Warwick Soden

Mr Warwick Soden is Registrar and CEO of the Federal Court of Australia. 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 Tania Sourdin is Professor of Law and Dispute Resolution and Director of Conflict Resolution and Practice, Australian Centre for Peace and Conflict Studies, University of Queensland. From 2002 – 2007, she was Professor of Law and Dispute Resolution and Director, Conflict Resolution Research Centre at La Trobe University. Professor Sourdin is a part-time member of the Administrative Appeals Tribunal, and completed a term as a senior member with the NSW Consumer Trader and Tenancy Tribunal in February 2008. She has extensive experience in mediation studies both in Australia and overseas is a highly qualified ADR trainer. She has conducted research and independent reviews of a range of ADR and litigation schemes. Professor Sourdin has published extensively on ADR and is author of *Alternative Dispute Resolution* (third edition, 2008).
NADRAC is supported by a Secretariat located in the Attorney-General’s Department. The functions of the Secretariat are to:

- undertake research on ADR issues being considered by the Council
- provide policy advice to the Council
- respond to public, government and other enquiries on behalf of the Council and represent the Council, as required, in a variety of forums
- draft Council and committee reports and discussion papers
- draft all Council and committee correspondence, letters of advice and other material including the Council’s annual report and its newsletter
- 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
- manage NADRAC’s expenditure within the relevant budgetary allocations.

The staff of the Secretariat during 2007–2008 were:

Director (full-time) Serena Beresford-Wylie

Acting Legal Research Officer (full-time) Andrew Crocker (May 2007 – July 2007)

Acting Legal Research Officer (full-time) Sarah McFarland (August 2007 – December 2007)

Legal Research Officer (full-time) Alison McLennan (from January 2008)

Acting Project Officer (full-time) Ruba Rashid

Administrative Officer (part-time) Miranda Cameron (from May 2007 – August 2007) and Farhana Masih (from 21 August 2007)

*The Administrative Officer position is shared with the Administrative Review Council.*

Summer Clerks (full-time) Gregory Sadler (26 November 2007 – 11 January 2008)


Contact details

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Phone 02 6250 6272 (international 61 2 6250 6272)

Fax 02 6250 5980 (international 61 2 6250 5980)

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e-mail nadrac@ag.gov.au
4. Meetings and Forums

Council Meetings


Melbourne – 12 July 2007

NADRAC’s 42nd Council Meeting was held on 12 July 2007 at the Federal Courts Building in Melbourne.

Canberra – 20 March 2008

NADRAC held its 43rd Council Meeting on 20 March 2008 at the Commonwealth Attorney-General’s Department, Robert Garran Offices in Canberra. NADRAC met by teleconference with Ms Juanita Pope, Project Manager of the Federal Court’s Indigenous Dispute Resolution and Conflict Management Case Study Project to discuss the progress of the project. NADRAC welcomed its new member, Professor Nadja Alexander, who attended part of the meeting by telephone.

Canberra – 4 June 2008

NADRAC’s 44th Council Meeting took place on 4 June 2008 at the Commonwealth Attorney-General’s Department, Robert Garran Offices in Canberra. NADRAC welcomed 4 new members to the meeting, Mr John Hodgins, Mr Tom Howe QC, Mr Stephen Lancken and Ms Lindsay Smith.
ADR Research Forum

NADRAC held its biennial ADR Research Forum on 13 and 14 July 2007 at La Trobe University in Melbourne. The Forum was opened by the former Attorney-General the Hon Philip Ruddock MP and NADRAC Chair, the Hon Justice Murray Kellam AO, delivered the welcoming address. Over 110 participants from across the country attended the Forum. The attendees were mostly researchers, practitioners and policy makers from government and private sectors. The research papers presented included the following topics:

- cross-cultural perspectives in ADR
- ADR training and education
- dilemmas for ADR practitioners
- ADR in Family Law
- inter-organisational uses of ADR
- ADR in the workplace, and
- theoretical and practical integration of ADR to legal practice

There was also a brief presentation on the Victorian Government ADR Strategy Project. Discussion sessions on ADR research methodologies and funding were facilitated by Dr Samantha Hardy, Lecturer from La Trobe University.

Ms Olivia Rundle presenting her paper at the ADR Research Forum (2007)
National Mediator Accreditation Committee Meeting

The National Mediator Accreditation Committee is an industry body established to implement the National Mediator Accreditation System. The NMAS which commenced on 1 January 2008 is a voluntary industry accreditation system. It provides a consistent base level of accreditation for all mediators.

NADRAC provides secretariat support to the National Mediator Accreditation Committee and hosted its historic first meeting on 5 March 2008 in Canberra.

The NADRAC Chair, the Hon Justice Murray Kellam AO, delivered a welcoming address and Professor Nadja Alexander facilitated the Committee’s discussions. The meeting brought together more than sixty senior representatives from the mediation sector to work together with the shared objective of advancing mediation practice. The meeting discussed a broad range of issues such as membership criteria, voting procedures, implementation procedures, complaints handling, training and continuing education requirements and funding.

The National Mediator Accreditation Committee sought NADRAC’s advice on the establishment of working groups to progress it work. With NADRAC’s assistance, four working groups were formed:

- National Mediator Accreditation Committee Working Group
- Mediator Standards Body Working Group
- Practice and Compliance Working Group, and
- Complaints Handling Working Group.

The First National Mediator Accreditation Committee Meeting in Progress (2008)
The Working Groups will report back to the National Mediator Accreditation Committee at its next meeting on 9 September 2008 in Perth.
ADR in Government Forum

NADRAC, in conjunction with the Office of Legal Services Coordination, convened an ADR in Government Forum on the evening of 4 June 2008 at the Old Parliament House in Canberra. The NADRAC Chair, the Hon Justice Murray Kellam AO, delivered a welcoming address. The Attorney-General, the Hon Robert McClelland MP, delivered the main address and launched the new NADRAC website. Mr McClelland encouraged government departments and agencies to give greater consideration to ADR and advocated development of a ‘resolution culture’ within Government.

Mr Fabian Dixon SC (Convenor of the NADRAC ADR in Government Committee) and Mr Tom Howe QC (Chief Counsel Litigation of the Australian Government Solicitor) also spoke at the Forum. Mr Howe talked about habits of thought which may discourage government lawyers from using ADR. These include a focus on the win/lose paradigm, poor familiarity with ADR and failing to ask ourselves why ADR would not be suitable in a particular case. He concluded that the place of ADR may be much larger than common habits of thought lead us to believe. Mr Dixon outlined practical strategies for improving use of ADR such as training in relationship management, the use of model dispute resolution clauses and sharing information about dispute resolution strategies with other agencies.

The Attorney-General addressing the ADR in Government Forum at Old Parliament House (2008)

The Forum was well attended by many government lawyers from various government departments and agencies and other members of the legal profession.
5. NADRAC Work Program

Work Plan

Some of the key priorities identified by NADRAC in 2007-2008 were:

- continue to foster the development of a system for the national accreditation of mediators
- commence a new project aimed at developing national ethical guidelines for mediators with a range of professional backgrounds
- provide advice on the proposed registration of family dispute resolution practitioners
- prepare a guide to the ADR requirements of the Model Litigant Provisions in the Commonwealth Legal Services Directions
- commence a new project to develop advice on ADR clauses in government contracts
- hold the Third National ADR Research Forum over two days in Melbourne
- work with the Federal Court to develop a DVD for the public to promote ADR as an adjunct to court and tribunal proceedings
- continue its role as project sponsor for the Federal Court’s Indigenous Dispute Resolution and Conflict Management Case Study Project and attend meetings of the reference group
- redevelop and enhance NADRAC’s website
- revise, update and significantly expand the Council’s mailing list, and
- provide advice as appropriate on other ADR matters relevant to NADRAC’s Charter that arise during the year.

On 13 June 2008, the Attorney-General issued NADRAC with a reference on ADR in federal civil proceedings. NADRAC has been asked to enquire into and identify strategies for litigants, the legal profession, tribunals and courts to remove barriers from and provide incentives to ensure greater use of appropriate dispute resolution options as an alternative to civil proceedings and during the court or tribunal process. The Attorney-General also sought advice on initiatives governments might take to support the recommended strategies including legislative action. NADRAC has been asked to complete this report by 30 September 2009.
### 6. Summary of NADRAC’s submissions and advice

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 website (www.nadrac.gov.au).

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Key points</th>
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| May 2008   | Further Submission to the Parliament of Victoria Law Reform Committee’s Inquiry into Alternative Dispute Resolution* | NADRAC was asked by the Victorian Law Reform Committee to provide further input relating to their ADR inquiry. The submission addressed the following issues:  
  - National Mediator Accreditation System and National Mediator Accreditation Committee  
  - consumer experiences with ADR  
  - collaborative promotional campaigns  
  - ADR and marginalised communities  
  - suitability of ADR in different types of disputes  
  - online dispute resolution, and  
  - collaborative law. |
| January 2008 | Submission in response to Australian Law Reform Commission Discussion paper 72 Review of Australian Privacy Law* | NADRAC provided comments to the Australian Law Reform Commission on Question 40-2 about the potential necessity for exemption or exceptions to the Privacy Act 1988 (Cth) for ADR schemes.  
NADRAC identified the following ways in which the Privacy Act may affect the dispute resolution process:  
  - by preventing an agency or organisation who may be a party to a dispute from revealing personal or sensitive information about a person without first obtaining that person’s consent  
  - by requiring an agency or organisation which provides an ADR service to inform third persons about the collection of information about them  
  - by preventing the ‘collection’ of sensitive information by an ADR provider  
  - increasing the time taken to resolve disputes and the costs of the process, thereby diminishing the efficiency and effectiveness of the ADR process and its benefits vis a vis litigation, and  
  - by creating uncertainty/ambiguity about the obligations of ADR providers. |
| December 2007 | Submission to the Attorney-General’s Department on recommendations 2 and 31 of the Older People and the Law report | NADRAC provided comments on the Attorney-General’s Department’s Older People and the Law report recommendations 2 and 31.  
NADRAC supported the Committee’s recommendations for the funding by Australian governments of specialised dispute resolution services to assist older people affected by financial abuse and fraud, particularly familial disputes, and in situations where family agreements have broken |
down (as per Recommendations 2 and 31). However, NADRAC had no view as to how these services would best be provided. NADRAC doubts whether it is appropriate to refer to services for older people as ‘family dispute resolution’ given the very specific meaning given to that term under the *Family Law Act 1975*. NADRAC would support intergovernmental discussions on this issue to coordinate coverage of any new services and minimise gaps or unnecessary duplications between jurisdictions.

| November 2007 | Submission in response to the Parliament of Victoria Law Reform Committee’s ADR Inquiry* | The submission addressed the following issues raised in the discussion paper:  
• data collection for ADR  
• increasing awareness of and accessibility of ADR services  
• referral to ADR  
• ADR standards and regulation, and  
• confidentiality and immunity. |
| October 2007 | Submission to the Attorney-General’s Department on draft *National Indigenous Law and Justice Strategy* paper | NADRAC considered that the draft Strategy should have a greater focus on ADR as a way to help Indigenous Australians to manage and resolve disputes without the need for a judicial decision. NADRAC suggested the following actions/measures be included in the Strategy:  
• greater access to restorative justice programs to divert offenders out of the criminal justice system where appropriate and reduce rates of recidivism  
• greater access to ADR programs, such as Indigenous mediation, to resolve personal, family and community conflicts/disputes before they escalate and result in crime and violence (these programs could draw on traditional dispute resolution processes)  
• greater access to programs that teach ADR skills such as clear communication and reflective listening  
• ongoing research into and evaluation of Indigenous ADR programs to identify and develop best practice models and foster continuous improvement in them  
• development of a national consistent performance data framework for Indigenous ADR programs to underpin the research and evaluation referred to above  
• inter-governmental adoption of the Statement of Principle contained in NADRAC’s report *Indigenous Dispute Resolution and Conflict Management (2006)*, and implementation of the recommendations in the above report, particularly:  
  - the design and development of an appropriate training package for practitioners who provide ADR services to Indigenous people |
- evaluation of the proposal for a national network of practitioners who provide services to Indigenous people as a way of enhancing consistency and quality of their services
- implementation, as appropriate, of the findings of the Federal Court’s Indigenous Dispute Resolution and Conflict Management and Case Study Project, and
- ongoing inter-governmental coordination for ADR services for Indigenous people.
## Previous Years

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Key points</th>
</tr>
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<tbody>
<tr>
<td>March 2007*</td>
<td>Advice on a new accreditation system for Family Dispute Resolution Practitioners</td>
<td>The submission addressed the following issues raised in the discussion paper:</td>
</tr>
<tr>
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<td></td>
<td>• standards</td>
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<td></td>
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<td>• accreditation</td>
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<td></td>
<td>• registration</td>
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<td>• complaints procedure</td>
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<td></td>
<td></td>
<td>NADRAC also proposed some additional options that may be worthwhile to consider. The additional options encompass how the framework might be implemented and means of ensuring that the pool of family dispute resolution practitioners who will practice in this are not reduced.</td>
</tr>
<tr>
<td>November 2006*</td>
<td><em>Legislating for alternative dispute resolution – A guide for government policy-makers and legal drafters</em></td>
<td>NADRAC identified the following issues policy makers need to consider when incorporating ADR processes into new or existing legislation:</td>
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<td></td>
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<td>• Is there a need for legislation?</td>
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<td>• What type of ADR is most appropriate?</td>
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<td></td>
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<td>• How should disputes be referred to ADR?</td>
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<td>• Should participation in ADR be compulsory for the parties?</td>
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<td>• Should participation in ADR be voluntary?</td>
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<td>• What are the duties and standards expected for ADR practitioners?</td>
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<td>• How is the ADR practitioner selected?</td>
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<td>• Should legislation provide immunity from suit for ADR practitioners?</td>
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<td>• What issues are relevant to confidentiality and disclosure of communications made during ADR processes?</td>
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<td></td>
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<td>• Should ADR communications be admissible as evidence in later proceedings?</td>
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<td>• How should agreements reached at ADR become enforceable?</td>
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<td>The key issues identified in this guide concern the legal rights, obligations and protection of the parties who participate in ADR processes and the powers and obligations of both the bodies who refer parties to ADR and ADR practitioners.</td>
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<td>November 2006</td>
<td>Comments on the Community Services and Health Industry Skills Council (CSHISC) development of a</td>
<td>NADRAC raised the following issues in its further submission to the CSHISC:</td>
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<td>• training organisations and institutions</td>
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<td>• supervision</td>
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<td>• existing family dispute resolution services and family</td>
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21
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<tr>
<th>Date</th>
<th>Event</th>
<th>Notes</th>
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| September 2006 | Comments on Family Law Council’s draft *Collaborative Law Report* | NADRAC raised issues relating to:  
- training and education of practitioners  
- relationship with legal aid arrangements  
- the relationship with other practice such as counselling  
- enforcement of collaborative law contracts  
- limitations on collaborative law, and  
- when collaborative law should be offered as an option. |
| June 2006 | Comments on proposed revisions to *UNICTRAL Model Law on International Commercial Arbitration (1985)* | NADRAC provided input to the Attorney-General’s Department and expressed support for provisions empowering arbitrators to issue preliminary orders on an ex parte basis in arbitration arising from commercial contracts. |
| January 2006* | Indigenous Dispute Resolution and Conflict Management Report | NADRAC identified 10 statements of principle and six recommendations for action to promote effective Indigenous dispute resolution and conflict management.  
Effective dispute resolution and conflict management services assist Indigenous people to achieve a range of social, cultural and economic goals and improved access to justice. |
| November 2005* | Joint letter of advice by NADRAC and the Family Law Council on immunity for family counsellors and family dispute resolution practitioners under the *Family Law Act 1975* | It is not appropriate to confer the same immunity that applies to a judge, when performing the functions of a judge, on family dispute resolution practitioners performing facilitative dispute resolution, advisory dispute resolution or on family counsellors when conducting family counselling. |
| July 2005 | Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the provisions of the Exposure Draft of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005* | The submission addressed the following aspects of the exposure draft of the Bill:  
- terminology  
- practical considerations in implementing compulsory dispute resolution  
- confidentiality, and  
- mediator training in circumstances where they have an advisory role. |
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<tr>
<th>Date</th>
<th>Event Description</th>
<th>Implementation of the reforms should address the following issues:</th>
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| January 2005 | Submission in response to the Attorney-General’s Department’s discussion paper *A New Approach to the Family Law System: Implementation of Reforms* | - The required skills, roles and accreditation level of the parenting adviser need to be clarified, particularly to avoid compromises to neutrality. Currently, there are too many responsibilities for one person and some of them are not compatible with the provision of ADR services.  
- Objectives of mediation need to be defined: operational and evaluation criteria should be clearly articulated, especially as these goals will determine the character of the mediation process and the mediator’s role.  
- Successful implementation of the reforms is resource intensive. Different models, criteria and resources will be required in rural and remote areas – funding must be adequate and on-going.  
- While compulsory mediation is generally supported, it is important that focus on agreement does not supersede the best interested of the child. In this respect, concentration on parental decision-making is preferable. Compulsory mediation must also be properly resourced.  
- Parents should decide for themselves if they wish lawyers to be present at joint parenting sessions. Having lawyers present at some stage of the process may be helpful in providing parties with support and advice.  
- Parenting plans may not be effective in the long term, as they can become convoluted and inflexible to changing circumstances. Appropriate content for plans needs to be clearly defined to address this. Yet plans can be useful in defusing conflict in the early post-separation stage and for identifying agreed issues between parties.  
- There should be no presumption of equal parting time: such a presumption suggests parents’ interests are ahead of the best interests of the child. The presumption also neglects the unique circumstances of each family which may require different arrangements. Where the presumption is viewed as the norm, parents will feel their alternative, mediated arrangement is a failure.  
- There need to be appropriate mechanisms to ascertain the views of children in the decision-making process. |
| November 2004 | Comments on Attorney-General’s Department’s outline of possible national defamation law | - Explicit reference should be made to ADR processes.  
- Mediation is especially useful for defamation matters. There is no reason why court processes, including costs, should be different for defamation matters. |
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<th>Date</th>
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| August 2004| Pre-action PDR and *Family Law Rules 2004* Letters to Family Courts of Australia and Western Australia | The requirement for pre-action PDR in the Family Law Rules 2004 are desirable, but there is a need to monitor its impact, including:  
• increased demand for PDR services, and  
• a possible increase in inappropriate referrals. |
| August 2004| Letter to CEO of National Judicial College of Australia             | Advice about the content of judicial education sessions.                                                                             |
| April 2004 | Legal Services Directions - Submission to Attorney-General’s Department on the Review of the Legal Services Directions | Changes to the Legal Services Directions should be an element of a broader strategy involving:  
• a focus on the prevention of disputes in the first place  
• a commitment to use ADR where disputes occur, both before and during litigation  
• improved dispute resolution practices by those involved in Commonwealth litigation and legal services  
• the development of high standards of ADR practice, and  
• broader whole-of-organisational changes to the prevention, management and resolution of disputes involving Commonwealth agencies. |
| March 2004 | *Who says you're a mediator? Towards a national system for accrediting mediators* Options paper | The paper aims to stimulate discussion and obtain information prior to the July 2004 National Mediation Conference. It sets out principles underpinning mediator accreditation, outlines options for a national mediation accreditation system, and puts forward a proposal for an organisation that would accredit accrediting organisations. Written responses were invited. |
| March 2004*| *ADR Research: A resource paper* Resource paper for ADR researchers | The paper is intended to promote discussion and assist those who are researching dispute resolution processes, programs, systems and practices. It provides resources and guidelines for different aspects of ADR research, namely:  
• context and system  
• objectives  
• accessibility  
• effectiveness  
• clinical research  
• integrating research, policy and practice, and future strategies. |
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<th>Date</th>
<th>Description</th>
<th>Notes</th>
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<tbody>
<tr>
<td>March 2004*</td>
<td>Court referral to ADR: Criteria and research</td>
<td>Provides a thorough analysis of existing research examining criteria or factors on which courts and tribunals could base decisions to refer a dispute to ADR. It concludes that: • there are very few general referral criteria which reliably indicate whether or not ADR will be effective in any particular dispute • there are a number of practical steps a court or tribunal can take to develop a valid program of referral to ADR, and • this task is best undertaken by each court or tribunal in light of its own context, program goals, jurisdiction and case mix, potential ADR users, local legal profession and culture, internal resources and external service providers.</td>
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<td>March 2004*</td>
<td>Child Custody Inquiry Letter to Attorney-General at Council’s own motion, in response to the Report of Standing Committee on Family and Community Affairs into child custody arrangements in the event of family separation</td>
<td>• supports the call for greater emphasis on ADR • if there is to be a clear statutory requirement to promote certain outcomes, then the process be called ‘conciliation’ rather than ‘mediation’ • mandatory mediation can be an effective process, subject to appropriate assessment and professional standards. Issues to be addressed include: • meaningful involvement • scope of dispute resolution processes • establishing compliance • assessment • supports the concept of an entry point in principle, but that there be a degree of flexibility and discretion in the means by which people access the proposed new family law system • a new Families Tribunal could lead to another formal layer in the family law system. Need to clarify • the relationship between Tribunal conciliation and earlier dispute resolution steps • the role of the Tribunal conciliator • training and qualifications of Tribunal members • agrees with the principle of child focussed and child inclusive practices • the appropriate timing for a referral to ADR varies widely from case to case • in implementing the recommendation for legal training courses in dispute resolution, the amount of study be defined or quantified, and</td>
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<tr>
<td>Date</td>
<td>Source and Details</td>
<td>Comments</td>
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| January 2004 | Standards Australia Comments on *Standard on Dispute Management* (Revision of AS 4608-1999) | - standards could be re-titled dispute management systems  
- objectives should focus more on eventual outcomes of the system  
- emphasis should be on skill development in dispute management  
- organisation culture is critical and should receive prominence  
- coverage of suggested standard may be too broad  
- relationship to risk management standard requires clarification  
- proposed standard may not be relevant to some types of organisations  
- give consideration to retaining the existing as well as the proposed new standard, and  
- evaluation should include qualitative and quantitative elements. |
| December 2003 | Community Justice Centres Comments on NSW Law Reform Commission issues paper 23 | Notes that the paper already makes extensive reference to NADRAC material and draws attention to issues of mutual interest. |
| September 2003* | Dispute resolution terms - Introduction and glossary of dispute resolution terms | - consistency in terms is important but needs to be balanced with diversity and innovation  
- terms exist in context and do not of themselves resolve standards, legal and policy issues  
- preference for term dispute resolution practitioner rather than third party neutral  
- preference for term ‘conciliation’ rather than ‘mediation’ to be used where practitioner as an advisory as well as facilitative role, and  
- terms other than ‘mediation’ may better reflect dispute resolution process offered by courts.  

A glossary is provided which outlines common usage of dispute resolution terms in Australia. |
| May 2003* | *ADR statistics* – Published statistics on ADR in Australia | Intended as a resource document to guide consideration of ADR data collection. |
| August 2003 | Shared parenting Submission to Inquiry by the Standing Committee on Family | - clarify terms and concepts concerning child arrangements after separation  
- consider the desirability of equal time arrangements |
and Community Affairs into child custody arrangements in the event of family separation

- assess the risks associated with any rebuttable presumption that children spend equal time with both parents
- support alternative (or ‘primary’) dispute resolution services to deal with issues arising from such a rebuttable presumption, and
- consult with children themselves about such a presumption.

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<thead>
<tr>
<th>August 2003</th>
<th>Family Law reforms Letter to the Attorney-General</th>
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<td>Draws attention to NADRAC’s consideration of various issues in family law work, including:</td>
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<td>- terminology, and recommendation for discontinuing the terms ’PDR’ and ’Primary Dispute Resolution’</td>
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<td>- Family Law Rules</td>
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<td>- quality framework</td>
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<td>- funding for community organisations</td>
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<td>- Indigenous ADR</td>
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<td>- Parliamentary Child Custody Inquiry, and</td>
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<td>- contacts under compliance regime.</td>
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<tr>
<th>April 2003</th>
<th>Report of submissions to terminology paper</th>
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<tr>
<td>Consolitates and summarises the submissions received in response to NADRAC’s ADR Terminology discussion paper.</td>
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<tr>
<th>April 2003</th>
<th>Family Law Rules revisions Submission to the Family Court of Australia</th>
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<tbody>
<tr>
<td>the rules should be user friendly</td>
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<td>the proposed practice manual should take into account the needs of agencies apart from the Family Court</td>
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<td>the rules should specify ’pre-action’ procedures</td>
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<td>consistent terminology is required</td>
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<td>supports criteria for ordering family reports, and</td>
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<td>supports costs consequences flowing from genuine efforts to settle property matters.</td>
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<tr>
<th>April 2003</th>
<th>Primary Dispute Resolution paper-Comments to the Family Law Council on draft paper</th>
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<tr>
<td>distinctions between mediators and counselling, and between models of mediation, and</td>
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<td>need to clarify PDR in legal aid context.</td>
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<tr>
<th>April 2003</th>
<th>Australian Standard on the prevention, handling and resolution of disputes Comments on proposed revision to AS 4608-1999</th>
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<tr>
<td>Interim response:</td>
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<tr>
<td>- no objection to revision, and</td>
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<tr>
<td>- NADRAC report on standards emphasises consultation, review and evaluation of standards, link to other standards.</td>
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<tr>
<th>February 2003*</th>
<th>ADR research, evaluation and data</th>
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<tr>
<td>Document produced to assist NADRAC round table on ADR research held on 21 February 2003.</td>
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<td>Date</td>
<td>Event Description</td>
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<td>December 2002</td>
<td>UNCITRAL Conciliation Rules Letter to Attorney-General</td>
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<td>November 2002</td>
<td>Judicial education Letter to Director of Judicial College of Australia</td>
</tr>
</tbody>
</table>
| October 2002   | Amendments to 19N of Family Law Act Brief comments to Family Law and Legal Assistance Division | • support 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, and  
• 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. |
| September 2002 | Review of Federal Magistrates Service Letter to working group                  | Stresses importance of data collection.                                   |
| August 2002    | National research priorities - Submission to the Department of Education, Science and Technology | Nominates ADR as a thematic priority for national research.               |
| June 2002*     | ADR terminology: a discussion paper                                             | Poses a series of questions about how terms are used, and should be used, in ADR. |
| April 2002     | Government use of ADR – Letter to Attorney-General                              | • need for reference to ADR and to ADR standards in the Legal Services Directions  
• need for ADR clauses in contracts for provision of goods 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                                   | • take into account impact and potential of technology  
• consider accessibility, fairness, effectiveness, cost and legal issues |
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<th>Date</th>
<th>Source</th>
<th>Comments</th>
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</table>
| February 2002 | Mediation competencies Letter to Community Services and Health Training Australia | General comment on draft qualifications and competencies in community mediation:  
• consultation  
• diversity, and  
• 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 ELPAG’s report  
• need for well researched and 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), and  
• need for evaluation of innovative models of service delivery. |
| January 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, and  
• need to clarify implementation issues – costs, compliance, infrastructure. |
| December 2001 | ADR in E-Commerce Submission to Expert Group on e-commerce regarding discussion | • need for consultation and coordination in e-commerce ADR  
• consistency in terminology required  
• independent research and evaluation of on-line ADR |
<table>
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<tr>
<th>Date</th>
<th>Document Title</th>
<th>Summary</th>
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</table>
| November 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, and  
- statutory protections also require review. |
| August 2001 | Definitions Brief discussion paper 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                                                     | - need to address termination issues, and resolve ambiguity surrounding ‘imminence of resolution’, and  
- 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. |
### Standards for ADR

- recommends framework (guidelines for developing standards, a code ad enforcement of code by appropriate means); recognise diversity
- service providers to adopt and comply with code of practice
- service providers to have a complaints mechanism
- examine feasibility of ADR Ombudsman
- monitor complaints
- compliance based predominantly on self-regulation
- compliance with code of practice as part of Commonwealth contracts
- other governments also to require compliance with a code
- consumer education activities to encourage code
- mandating bodies give special attention to quality
- review of statutory provision
- determine need for accreditation on a sector by sector basis
- principles suggested for accreditation of practitioners
- accrediting bodies develop mutual recognition
- selection process to be fair, transparent, effective
- engagement of practitioner based on knowledge, skills and ethics, not necessarily tertiary qualifications
- training providers inform participants of expected outcomes
- training take account of (framework); be performance based, and use best practice learning strategies
- explore peak body
- resources commensurate with risks and benefits, and improved data collection.

### On-line ADR - 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.

### Criteria for referral to ADR

Assessment of suitability is complex. There is a lack of empirical research on suitability criteria. Some factors identified are:
- 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 non-adversarial forum
- bad faith bargaining, or clear likelihood of this
- the intention of one party to use the process to harass
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<tr>
<th>Date</th>
<th>Action</th>
<th>Description</th>
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<tr>
<td>May 2000</td>
<td>Administrative Review Tribunal Letters of advice to Attorney-General’s Department</td>
<td>Need for specific reference to ADR processes.</td>
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<tr>
<td>June 2000</td>
<td>ADR data collection in courts Letter to Attorney-General</td>
<td>Need for improved data collection on Court ADR, starting with federal courts and tribunals</td>
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</tbody>
</table>
| 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 ought  
• repeal registration provisions, and  
• encourage an integrated parenting plans/consent order package. |
| March 2000 | Use of term mediation Letter to Family Court of Australia              | Need for consistent terminology.                                                                                                             |
| 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 |
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<tr>
<th>Date</th>
<th>Document Title</th>
<th>Recommendations</th>
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<tr>
<td>March 2000*</td>
<td>Standards for ADR Discussion paper</td>
<td>• Proposed framework for ADR standards</td>
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<td>• Asked 70 questions for comments</td>
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<td>See 2001 – 04</td>
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<tr>
<td>December 1999*</td>
<td>Federal Magistrates Service Rules and Regulations Part 2 Report to Attorney-General</td>
<td>• provide information/education about ADR through information sessions, brochures, initiating documents</td>
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<td>• develop and publish guidelines (indicators/contraindicators) for referral to ADR</td>
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<td>• ADR practitioners has an obligation to assess for suitability</td>
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<td>• 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</td>
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<td>• encourage parties to go to Court to obtain a referral order to ADR</td>
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<td>• Court personnel should not automatically be qualified as ADR practitioners</td>
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<td>• need for standards referral orders (providing certain powers and obligations of ADR practitioner)</td>
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<td>• incorporate definitions into rules of court</td>
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<td>• immunity/confidentiality should not prevent consumer redress</td>
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<td>• regulations should specify that ADR service providers have a complaints mechanisms</td>
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<td>• ADR practitioner should report back to court on termination (defined headings, but not willingness to cooperate)</td>
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<td>• evaluate ADR services</td>
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<td>• cost to take account of ADR costs, and refusal to attend ADR, and</td>
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<td>• court should scrutinise ADR agreements.</td>
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<tr>
<td>March 1999*</td>
<td>Federal Magistrates Service – Act (March 1999) Part 1 Report to Attorney-General</td>
<td>• ADR should be an integral part of the Court.</td>
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<td></td>
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<td>• legislation should refer to DR, not ADR processes.</td>
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<td>• focus on procedural flexibility</td>
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<td>• ADR not a replacement for judicial adjudication</td>
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<td>• emphasis proper assessment, referral and quality</td>
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<td>• set out objectives in a legislative provision</td>
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<td>• legislation should name each DR process</td>
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<tr>
<td>February 1999</td>
<td>Law Reform Commission of Western Australia Review of the Civil and Criminal Justice System (February 1999) Response to Consultation Paper on the Use of Court-based or Community Dispute Resolution Processes</td>
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<td>· importance of a range of DR processes</td>
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<td>· importance of data collection on DR</td>
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<td>· confidentiality of court files and details of DR attendance</td>
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<tr>
<td>· importance of criteria for appraisal/screening of each case</td>
<td></td>
<td></td>
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<tr>
<td>· support court with multiple dispute resolution ‘doors’</td>
<td></td>
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<tr>
<td>· the ADR process should be adaptable to the particular case</td>
<td></td>
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<tr>
<td>· timing of when ADR might be used</td>
<td></td>
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<tr>
<td>· more information about the court and ADR</td>
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</tbody>
</table>

- 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 report 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, and
- Court to make rules on a simple, inexpensive process for initiating action within the court without pleadings.
<table>
<thead>
<tr>
<th><strong>Alternative Dispute Resolution Schemes and Alternative Forums for Adjudication</strong></th>
</tr>
</thead>
</table>
| - 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, and  
- limited statutory duty of confidentiality. |

<table>
<thead>
<tr>
<th>February 1999</th>
<th>Small Business Access to the Legal System Advice to Attorney-General’s Department in response to the Suggestions Paper of the <em>Review of Small Business Access to the Legal System</em></th>
</tr>
</thead>
<tbody>
<tr>
<td>Support the thrust of the recommendations, but concerned that some recommendations impractical and raise resource implications; need to give attention to processes of implementation.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>January 1999</th>
<th>Workplace Mediation Submission to Department of Workplace Relations and Small Business in response to Ministerial Discussion Paper: <em>Approaches to Dispute Resolution A Role for Mediation?</em></th>
</tr>
</thead>
</table>
| - distinguish mediation from conciliation in industrial relations  
- need for assessment and screening of matters for suitability  
- proceed to arbitration or adjudication after unsuccessful mediation (i.e. not proceed to conciliation)  
- mandatory mediation acceptable in certain circumstances (a gatekeeper required), and  
- public and private providers should be able to deliver mediation services; mediators should have working knowledge of the legislation. |

| --- | --- |
| - benefit of ADR = timeliness, cost effectiveness, flexible outcomes and client satisfaction  
- need for a variety of DR processes  
- flexibility importance  
- gate keeping 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 and facilitative and advisory processes  
- supports ADR training for judges  
- ADR should not be used to reduce funding for courts |
<table>
<thead>
<tr>
<th>Date</th>
<th>Source</th>
<th>Details</th>
</tr>
</thead>
</table>
| April 1998 | Small Business Department of Workplace Relations and Small Business – Response to *ADR Information Kit for Small Business* | • 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, and  
• lawyers should advise clients of ADR. |
| April 1998 | Standards Australia  - Comment on the proposed *Standard on Dispute Resolution* | • suggests amendments to proposed criteria for ADR processes, and  
• 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 on small business via informal networks, and  
• specific recommendation on additions to proposed kit. |
| December 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 planning and policy development, diversion from litigation  
• raises issues of accountability in context of outsourcing, and  
• raises issues about the functions of a proposed Office of Family Relationship Services. |
| November 1997* | Diversity 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:  
• dispute resolution system design  
• training  
• access to ADR services  
• cost  
• social trends of public concern and interest  
• links with associated services
<table>
<thead>
<tr>
<th>Date</th>
<th>Source</th>
<th>Key Points</th>
</tr>
</thead>
</table>
| November 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, and  
• need for better ADR data collection. |
| March 1997* | Family Law Regulations (March 1997) 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 (e.g. 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 sub regulation 60(3) – mediation of that kind to general reference to mediation of family disputes  
• provide authorisation scheme for ‘true grandparents’ of mediation  
• remove sub regulation 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 (i.e. not necessarily current members)  
• provide that (a) mediator conducts an assessment or is satisfied that it has been appropriately conducted; and (b) decision to proceed or not could be taken by |
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 1997</td>
<td>Authorisation of Family and Child Counsellors - Letter to Attorney-General’s Department</td>
<td>High level of training and expertise required for family and child counsellors, due to incidence of violence and abuse.</td>
</tr>
</tbody>
</table>
| February 1997 | AFP/NCA complaints 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 | • 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, and  
• ADR should not be compulsory for complainants, but possibly for members of police force. |
| January 1997 | Benchmarks for Consumer Dispute Resolution Schemes                                              | Include specific reference to situations where ADR may be inappropriate, such as power imbalance. |
| January 1997 | Non-consensual mediation in the Federal Court of Australia - Letter of advice to Attorney-General’s Department | • mandatory mediation maybe appropriate in some circumstances; a properly trained `gatekeeper’ is required, and criteria applied for referral, and  
• mediators should have the time appropriate to meet the needs of the parties. |
<p>| November 1996 | Government Service Charter Initiative                                                            | In staff training section, address issues of power imbalance and potential biases between consumers and providers. |
| October 1996 | Youth Homelessness - Submission to Youth Homelessness                                           | Address issue of family violence, family dysfunction and power imbalance in considering youth reconciliation services. |</p>
<table>
<thead>
<tr>
<th>Taskforce</th>
<th>October 1996</th>
<th>June 1996</th>
</tr>
</thead>
</table>
| Family Services - Submission to Parliamentary Committee into Aspects of Family Services | - 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, and  
- support provision of quality mediation services provided by State Government agencies. | Reforms to succession laws should make reference to ADR processes in relation to disputes over estates. |

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 family law, federal courts and tribunals, civil procedure, alternative dispute resolution, administrative law and administration of related government programs) of the Attorney-General’s Department’s audited financial statements published in the Department’s Annual Report. The Secretariat Staff is located in the Department’s Civil Justice Division.

Expenditure on NADRAC in 2007-2008 (including secretariat travel costs but not other secretariat costs) is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Expenditure 2007/2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sitting fees</td>
<td>$5,740</td>
</tr>
<tr>
<td>Training and conferences</td>
<td>$2,639.76</td>
</tr>
<tr>
<td>Venue Hire &amp; Incidentals</td>
<td>$3,673.02</td>
</tr>
<tr>
<td>Domestic Airfares</td>
<td>$18,896.96</td>
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<tr>
<td>Travelling Allowance</td>
<td>$10,172.59</td>
</tr>
<tr>
<td>Car/Taxi hire</td>
<td>$3,154.63</td>
</tr>
<tr>
<td>Car Parking</td>
<td>$148.64</td>
</tr>
<tr>
<td>Printing</td>
<td>$546.64</td>
</tr>
<tr>
<td>Communication Charges</td>
<td>$1284.29</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$46,256.53</strong></td>
</tr>
</tbody>
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