



**NATIONAL ALTERNATIVE DISPUTE RESOLUTION ADVISORY
COUNCIL**

ANNUAL REPORT 2008–2009

Canberra

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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.

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1. YEAR IN REVIEW

The past year has been a very busy year for NADRAC as it undertook a broad inquiry into ADR in the Civil Justice System given to the Council by the Attorney-General, The Hon Robert McClelland MP. As noted in last year's annual report, this report was to be completed by 30 September 2009.

An issues paper on this Inquiry was released on 26 March 2009 and submissions were sought by 15 May 2009. The Council's Secretariat received over 60 submissions.

In addition, NADRAC consulted with key stakeholders in a series of consultations held in Canberra, Sydney and Melbourne. Organisations invited to participate in this consultation included Commonwealth and State government departments and agencies, Federal courts and tribunals, ADR providers, community legal centres, legal aid commissions, bar associations and law societies and ADR experts.

During 2008-2009, NADRAC continued providing secretariat support to the National Mediator Accreditation Committee and its four working groups. It hosted the second National Mediator Accreditation Committee meeting in Perth in September 2008 and provided support to its third meeting in Melbourne in May 2009.

This year also saw the launch of the NADRAC Hub, a collaborative workspace that supports NADRAC's work by providing a central online facility to store, find and review information and material on ADR.

2008-09 also saw changes to the membership of the Council. The Attorney-General appointed Ms Margaret Halsmith whose extensive experience in ADR is a wonderful addition to the Council's expertise. The Attorney-General also re-appointed Ms Norah Hartnett.

I anticipate the coming year will be as busy and rewarding as this year was. I thank the members and secretariat staff for their continued contribution to NADRAC's work.



Professor The Hon Murray Kellam AO

Chair

18 February 2010

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 2009 was as follows:

MEMBERSHIP AS AT 30 JUNE 2009

Name	Position	Date of first appointment	Expiry date of current term
Professor The Hon Murray Kellam AO	Chair	1 January 2004	31 December 2009
Professor Nadja Alexander	Member	19 September 2007	29 August 2010
Mr Fabian Dixon SC	Member	30 August 2004	29 August 2009
Mr Ian Govey	Ex officio	Not applicable	
Ms Margaret Halsmith	Member	4 September 2008	27 May 2011
Mr Ian Hanger AM QC	Member	30 August 2004	29 August 2009
Mr Greg Hansen	Member	30 August 2004	29 August 2009
Ms Norah Hartnett	Member	30 August 2001	29 August 2010
Mr John Hodgins	Member	28 May 2008	27 May 2011
Mr Tom Howe QC	Member	28 May 2008	27 May 2011
Mr Steve Lancken	Member	28 May 2008	27 May 2011
Dr Gaye Sculthorpe	Member	30 August 2004	29 August 2009
Mr Lindsay Smith	Member	28 May 2008	27 May 2011
Mr Warwick Soden	Member	11 August 1998	29 August 2010
Professor Tania Sourdin	Member	29 April 2002	29 August 2010

Further information about Members is included under Member Profiles in the next page.

Member Profiles as at 30 June 2009

Professor The Hon Murray Kellam AO



Professor The Hon Murray Kellam AO is an Adjunct Professor of Law at Monash University's Department of Business Law and Taxation. He was formerly a Justice of the Court of Appeal, Supreme Court of Victoria. Prior to his appointment to the Court of Appeal, he was a Justice of the Trial Division of the Supreme Court of Victoria. Professor Kellam was also President of the Australian Institute of Judicial Administration and President of the Victorian Civil and Administrative Tribunal. He 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. Professor Kellam 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. He is also a Vice President of the Australian Centre for International Commercial Arbitration (ACICA). Mr Govey is an ex officio member of the Council.

Ms Margaret Halsmith



Ms Margaret Halsmith is Director and Principal Mediator of Halsmith Consulting Pty Limited. She holds Bachelors degrees in Psychology and Arts and is a registered Family Dispute Resolution Practitioner. Ms Halsmith is an accredited mediator under the Supreme Court Rules (WA) and the National Mediator Accreditation System. She taught Dispute Resolution at Edith Cowan University and University of Western Australia. Ms Halsmith is the Chair of LEADR. She is also a member of the Western Australian Dispute Resolution Association under the auspices of which she convened the sub committee responsible for the National Mediator Accreditation System. She was Co-convenor of the National Mediation Conference held in Perth in 2008.

Mr Ian Hanger AM QC



Mr Ian Hanger AM 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.

Dr Gaye Sculthorpe



Dr Gaye Sculthorpe is a full-time member of the National Native Title Tribunal. She mediates native title applications in Queensland, New South Wales and Victoria and has extensive experience in facilitating Indigenous Land Use Agreements. She is a member of the Tribunal's Agreement-Making Strategy Group which produced a guide on mediating native title applications. Dr Sculthorpe has qualifications in anthropology and history and holds a PhD from La Trobe University in Melbourne. She is also an accredited mediator under the National Mediator Accreditation System. Dr Sculthorpe is a descendant of the Pyemairrener people of North Eastern Tasmania.

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.

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).

SECRETARIAT

Functions

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 enquires 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.

Staff

The Secretariat staff during 2008–2009 were:

Director (full-time)	Serena Beresford-Wylie
Senior Legal Officer (full-time)	Thomas John (from 18 November 2008)
Legal Research Officer (full-time)	Alison McLennan (28 January 2008 – 5 May 2009)
Legal Research Officer (full-time)	Susannah Webb (from 5 May 2009)
A/g Project Officer (full-time)	Ruba Rashid
Administrative Officer (part-time)	Farhana Masih (21 August 2007 – 4 July 2008) Melissa Wood (2 July 2008 – 12 September 2008) Jade Banks (8 September 2008 – 16 March 2009) and Teagan Hore (From April 2009)
Graduate (full-time)	Amoreaux McRae (9 June 2008 – 26 September 2008)

Contact details

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4. MEETINGS AND FORUMS

COUNCIL MEETINGS

NADRAC held three council meetings during 2008–2009.

PERTH – 10 AND 11 SEPTEMBER 2008

NADRAC's 45th Council Meeting was held on 10-11 September 2008 at the Hyatt Regency Hotel in Perth. NADRAC welcomed its new member, Ms Margaret Halsmith to the meeting. The Council also acknowledged the reappointment of Ms Norah Hartnett. Ms Juanita Pope, Project Manager of the Federal Court's Indigenous Dispute Resolution and Conflict Management Case Study Project and Ms Toni Baumann of the Australian Institute for Aboriginal and Torres Strait Islander Studies met with NADRAC members on 10 September to report on the project.

SYDNEY – 27 FEBRUARY 2009

NADRAC held its 46th Council Meeting on 27 February 2009 at the Commonwealth Attorney-General's Department in Sydney. At the Council's invitation, Mr Matt Minogue, Assistant Secretary, Access to Justice Division of the Attorney-General's Department briefed members on the progress of the Attorney's access to justice initiatives.

MELBOURNE – 29 MAY 2009

NADRAC's 47th Council Meeting took place on 29 May 2009 at the Commonwealth Insolvency Trustee Services Australia in Melbourne.

SPECIAL MEETING ON NADRAC REFERENCE

In addition to its usual meetings, NADRAC met on 9 December 2008 in Canberra for a special brainstorming session on NADRAC's Civil Proceedings Reference. It was a highly productive day long event at the Hotel Kurrajong and was facilitated by Mr Les Stahl.

STAKEHOLDER CONSULTATIONS

NADRAC held a series of consultations in Canberra, Sydney and Melbourne in 2009.

SYDNEY – 26 AND 27 FEBRUARY 2009

NADRAC held its first consultation at the Commonwealth Attorney-General's Department in Sydney on 26-27 February 2009. The Council met with the following individuals and organisations:

- Professor Hilary Astor, Professor of Dispute Resolution, Sydney University
- Ms Dianne Gibson, Director of Child Dispute Services, Family Court of Australia
- New South Wales Law Society
- New South Wales Bar Association
- National Association of Community Legal Centres

- Professor Peter Cashman, Professor of Law, Sydney University and former Commissioner in charge of the Victorian Law Reform Commission's Civil Justice Review
- Administrative Appeals Tribunal
- Federal Court of Australia
- Chartered Institute of Arbitrators
- Federal Magistrates Court of Australia
- Federal Litigation Section , Law Council of Australia
- Mr Jeremy Gormly SC, Barrister

CANBERRA – 27 MARCH 2009

NADRAC's second consultation was held at the Commonwealth Attorney-General's Department in Canberra on 27 March 2009. The Council met with the following organisations and individuals:

- Alternative Dispute Resolution Committee, Law Council of Australia
- Australian Taxation Office
- Ms Helen Marks, Director of Alternative Resolutions and Equity, Fairness and Resolution Branch, Department of Defence
- Social Security Appeals Tribunal
- Conflict Resolution Service ACT

SYDNEY – 30 APRIL AND 1 MAY 2009

On 30 April 2009 NADRAC held its third consultation which concluded on 1 May 2009. The consultations took place at the Commonwealth Attorney-General's Department in Sydney. The organisations that took part in the consultations are listed below:

- Australian Communication and Media Authority
- Workers Compensation Commission New South Wales
- Australian Securities and Investments Commission
- Australian Prudential Regulation Authority
- Australian Corporate Lawyers Association
- LEADR
- Australian Commercial Disputes Centre
- NSW Rural Assistance Authority - Farm Debt Mediation

CANBERRA – 7 MAY 2009

On 7 May 2009, NADRAC held its fourth consultation in Canberra. The Consultations took place at the Commonwealth Attorney-General's Department. The Council met with the following consultees:

- Office of Legal Services Coordination
- Australian Government Solicitor
- Department of Immigration and Citizenship
- Department of Finance and Deregulation
- Commonwealth Ombudsman
- Centrelink
- Department of Families, Housing, Community Services and Indigenous Affairs
- Department of Education, Employment and Workplace Relations
- Access to Justice Division, Commonwealth Attorney-General's Department
- Child Support Agency

MELBOURNE – 26, 27 AND 28 MAY 2009

NADRAC's fifth consultations took place at the Commonwealth Insolvency Trustee Services Australia in Melbourne from 26-28 May 2009. NADRAC met with the following consultees:

- Victorian Civil and Administrative Tribunal
- ADR Committee, The Victorian Bar
- Federal Court of Australia
- Family Court of Australia
- Financial Services Ombudsman
- ADR Directorate, Department of Justice Victoria
- Dispute Settlement Centre Victoria
- Takeovers Panel
- Officer of the Victorian Small Business Commissioner
- Law Institute of Victoria
- Federation of Community Legal Centres
- Energy and Water Ombudsman Victoria
- Telecommunication Industry Ombudsman

- Consumer Utilities Advocacy Group

CANBERRA – 2 JUNE 2009

NADRAC's sixth consultations took place at the Commonwealth Attorney-General's Department on 2 June 2009. The Council met with the following consultees:

- Access to Justice Taskforce, Commonwealth Attorney-General's Department
- ADR Directorate, Department of Justice Victoria
- Legal Aid Commission Tasmania

On the same day, NADRAC also met with representatives of the Australian Competition and Consumer Commission.

SYDNEY – 12 JUNE 2009

NADRAC held its seventh consultation in Sydney on 12 June 2009. This took place at the Commonwealth Attorney-General's Department. The Council met with the following consultees:

- Administrative Appeals Tribunal
- Community Justice Centres New South Wales
- Insolvency Practitioners Association of Australia
- IMF (Australia) Ltd
- Insurance Council
- Judge Margaret Sidis, District Court of New South Wales

National Mediator Accreditation Committee Meetings

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 has been providing secretariat support to the National Mediator Accreditation Committee and its four working groups. Following NMAC's incorporation in February 2009, NADRAC progressively reduced its practical support for NMAC's operations to foster its development as an independent representative organisation. Nevertheless, NADRAC continues to be very supportive of the NMAS and the functions that NMAC performs in relation to it.

Second NMAC Meeting – 9 September 2008

NADRAC hosted the second NMAC meeting on 9 September 2008 at the Hyatt Regency in Perth.

NADRAC members, Professor Tania Sourdin, Mr Ian Hanger AM QC, Professor Nadja Alexander, Professor Murray Kellam AO and Mr Steve Lancken along with Secretariat staff attended the day long meeting.

The Committee's four Working Groups presented their reports for discussion and approval. The Committee discussed a broad range of issues:

- its proposed Constitution (including decisions on voting and changes to membership criteria)
- proposed purpose and functions of a Mediator Standards Body (including its structure and funding)
- complaints handling by such a Mediator Standards Body; and
- ongoing practice and compliance issues.

Third NMAC Meeting – 28 May 2009

The third NMAC meeting took place on 28 May 2009 at the Jasper Hotel in Melbourne.

The meeting was attended by NADRAC members, Professor Nadja Alexander, Mr Ian Hanger AM QC, Professor Tania Sourdin and Ms Ruba Rashid from the Secretariat.

The Committee discussed and voted on various issues pertaining to its membership including election of its office bearers. It examined the working group reports on issues relating to the proposed functions, structure and funding of the proposed Mediator Standards Body as well as ongoing practice and compliance issues.

The Committee also thanked NADRAC, particularly Ms Ruba Rashid, for providing secretariat support to the Committee and its working groups for the past year.

5. 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 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 is located in the Department's Access to Justice Division.

Expenditure on NADRAC in 2008-2009 (including secretariat travel costs but not other secretariat costs) is as follows:

<u>Item</u>	<u>Expenditure 2008/2009</u>
Sitting fees	\$2,888.76
Training and conferences	\$9,167.00
Venue Hire & Incidentals	\$14,079.00
Meeting costs	\$763.00
Domestic Airfares	\$51,296.00
Travelling Allowance	\$27,903.00
Car/Taxi hire	\$6,238.00
Printing	\$462.00
Stationery and Consumables	\$725.00
Communication Charges	\$1157.00
Other	\$45.45
<u>Total</u>	<u>\$114,724.21</u>