



NADRAC

NATIONAL ALTERNATIVE DISPUTE
RESOLUTION ADVISORY COUNCIL

NADRAC ANNUAL REPORT 2009-2010

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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CONTENTS

1. Year in Review	1
2. About NADRAC	3
Establishment	3
Charter	3
3. Council Membership	5
Current Membership	5
Secretariat	11
<i>Functions</i>	<i>11</i>
<i>Staff</i>	<i>11</i>
<i>Contact details</i>	<i>12</i>
4. Meetings And Events	13
Council Meetings	13
<i>Canberra – 12 August 2009</i>	<i>13</i>
<i>Sydney – 3-4 September 2009</i>	<i>13</i>
<i>Canberra –5 November 2009</i>	<i>13</i>
<i>Hobart –26 March 2010</i>	<i>13</i>
Report Launches	14
<i>Launch of ‘Solid Work you Mob are doing’ Report</i>	<i>14</i>
<i>Launch of ‘Resolve to Resolve’ Report</i>	<i>15</i>
Seminar on ADR.....	16
Federal Dispute Resolution Roundtable	16
Family Law Roundtable	16
5. Financial Report	17

1. YEAR IN REVIEW

2009-2010 has been yet another busy year for NADRAC. During this year, NADRAC saw the launch of its highly anticipated report on ADR in the Civil Justice System entitled, *The Resolve to Resolve – Embracing ADR to improve access to justice in the federal jurisdiction*. The report presented the findings of a broad inquiry into the barriers and incentives to the use of ADR in the federal civil justice system. The report made 39 recommendations focusing on:

- strategies to encourage greater use of ADR;
- achieving greater consistency in ADR;
- improving public and professional awareness of ADR;
- mechanisms to provide quality ADR services;
- using ADR techniques in court and tribunal processes; and
- using ADR in government disputes

The report has been well received by the Attorney and NADRAC stakeholders. Presently the recommendations of this report are being considered by the Attorney-General's Department.

Following on from the Resolve to Resolve Report, on 1 December 2009 the Attorney-General gave NADRAC three new references:

- a reference on preparing a Model Dispute Management Plan to assist government agencies to consider having strategies in place to appropriately use ADR in dispute management planning.
- a reference asking NADRAC to advise the Attorney on what legislative changes are required to protect the integrity of different ADR processes such as issues of confidentiality, inadmissibility, conduct obligations for participants and ADR practitioners and the need, if any, for ADR practitioners to have the benefit of statutory immunity; and
- a reference on preparing a statement of Key National ADR Principles and a supporting guide for users of ADR services to help raise awareness of ADR in the community, encourage national consistency in the use of ADR and to better inform users of ADR about good practice.

Broad consultations on these references have been undertaken.

NADRAC has undergone some changes to its membership with the terms of appointment of Mr Greg Hansen and Mr Fabian Dixon SC coming to an end and with the appointment of Dr Andrew Bickerdike and the Hon Justice Andrew Greenwood. On behalf of the Council, I would like to thank Greg and Fabian for their valuable contribution to NADRAC's work and

welcome the new members to the Council. I am pleased that the Attorney-General also reappointed Mr Ian Hanger for another year.

On a personal note, my appointment to NADRAC will expire at the end of 2010 and I will not be seeking reappointment due to other commitments. I have had the privilege of working in this wonderful Council for almost 7 years and it has been a rewarding, interesting and challenging experience for me. I would like to express my sincerest gratitude to the members and secretariat staff for their dedication to furthering the Council's work. The Council has been well served by a hardworking group of members throughout my time as Chair. Furthermore the secretariat staff have without exception provided wonderful support to the Council during the same period.

Professor The Hon Murray Kellam AO
Chair

29 October 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 current membership is as follows:

Current Membership

Name	Position	Date of first appointment	Expiry date of current term
Professor The Hon Murray Kellam AO	Chair	1 January 2004	31 December 2010
Professor Nadja Alexander	Member	19 September 2007	29 November 2010
Dr Andrew Bickerdike	Member	1 January 2010	31 December 2012
Hon Justice Andrew Greenwood	Member	1 January 2010	31 December 2012
Ms Margaret Halsmith	Member	4 September 2008	27 May 2011
Mr Ian Hanger AM QC	Member	30 August 2004	31 December 2010
Ms Norah Hartnett	Member	30 August 2001	29 November 2010
Mr Tom Howe QC	Member	28 May 2008	27 May 2011
Ms Elizabeth Kelly	Ex Officio	Not applicable	
Mr Steve Lancken	Member	28 May 2008	27 May 2011
Dr Gaye Sculthorpe	Member	30 August 2004	31 December 2011
Ms Lindsay Smith	Member	28 May 2008	27 May 2011
Mr Warwick Soden	Member	11 August 1998	29 November 2010
Professor Tania Sourdin	Member	29 April 2002	29 November 2010

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

Current Member Profiles

Professor The Hon Murray Kellam AO



Professor The Hon Murray Kellam AO is an Adjunct Professor at Monash University's Department of Business Law and Taxation, Faculty of Economics. 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 a former 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 and Asian countries. He was recently appointed as Chief Commissioner of the Integrity Commission of Tasmania.

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.

Dr Andrew Bickerdike



Dr Andrew Bickerdike is currently the General Manager of Operations of Relationships Australia in Victoria where he has worked since 1999 specialising in family dispute resolution programs and mediation. He has been a member of the Family Court of Australia Expert Reference Panel since 2007, and lectured at La Trobe University from 1998 to 2004. Dr Bickerdike has qualifications in economics and behavioural science and holds a PhD from La Trobe University in Melbourne.

The Hon Justice Andrew Greenwood



Justice Greenwood is a Judge of the Federal Court of Australia. Prior to being appointed to the Federal Court in 2005, Justice Greenwood practised extensively in the fields of intellectual property, competition law and commercial litigation as a partner at Minter Ellison. He was the Queensland Chair of the Law Council of Australia's Trade Practices and Intellectual Property Committees. Justice Greenwood holds the position of Adjunct Professor in intellectual property and competition law, at the University of Queensland's T C Beirne School of Law and sits on the Advisory Board of the Key Centre for Ethics, Law, Justice and Governance at Griffith University.

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 also an Honorary Life Professor of Bond University and a Fellow of the Institute of Arbitrators and Mediators Australia. He is a member of the Court of Arbitration for Sport and a member of the panel of conciliators for the International Centre for Settlement of Investment Disputes. He has recently been appointed to the arbitration panel of the Chinese International Economic and Trade Arbitration Commission. He is former Director and Queensland Chair of LEADR.

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 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 24 years. Prior to joining AGS, he worked in private practice and as a solicitor with ACT Legal Aid. He is a member of the Federal Litigation Section of the Law Council, and the Council of the ACT Bar Association.

Ms Elizabeth Kelly



Ms Elizabeth Kelly is Deputy Secretary, Civil Justice and Legal Services Group, in the Attorney-General's Department. In this role she is responsible for a wide range of matters including the provision of legal services to the Commonwealth, federal court administration, family law, administrative law, human rights, indigenous justice, legal assistance, native title, legislative drafting, bankruptcy, classification, copyright, international law and territories. Prior to her appointment to the Attorney-General's Department in 2006, Elizabeth served in the ACT Department of Justice and Community Safety, the Northern Territory Attorney-General's Department and the Commonwealth Director of Public Prosecutions following a period of private practice in NSW.

Mr Stephen Lancken



Mr Stephen Lancken practices as a mediator and teacher and is the Australian Principal of the Trillium Group. He is also Program Director in Conflict Management and Negotiation for AGSM Executive Programs. Mr Lancken is a member of the New South Wales Law Society's Dispute Resolution Committee. He is an accredited under the National Mediator Accreditation System and an accredited specialist in Mediation, Dispute Resolution and Commercial Mediation with the Law Society of New South Wales. Mr Lancken is also a director of the Mediator Standards Board.

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 a former conflict resolution consultant at FH Collins Secondary School in Canada and is a former Deputy Principal of Mackay State High School. She is an accredited mediator under the National Mediator Accreditation System and an appointed mediator under the *Dispute Resolution Centres Act 1990*.

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



Tania Sourdin is a Professor of Conflict Resolution at The University of Queensland. She has extensive experience in mediation and conflict resolution and practiced as a mediator and presided in Courts and Tribunals in a range of positions since 1988. She has held a part time appointment at the Administrative Appeals Tribunal since 2001 and wrote the National Mediator Accreditation Standards in 2007. She has led a number of national research projects and conducted research into dispute resolution in eight courts and tribunals and four independent conflict schemes. She is the author of number of books (including *Alternative Dispute Resolution* - now in a 3rd edition), articles, papers and reports on a wide range ADR topics that include commercial dispute resolution, mediation, collaborative lawyering, high conflict disputants and judicial dispute resolution.

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 2009–2010 were:

Director (full-time)	Ms Serena Beresford-Wylie
Senior Legal Officer (full-time)	Mr Thomas John (18 November 2008 – 12 March 2010)
Senior Legal Officer (full-time)	Ms Zhen Ye (from 29 April 2010)
Senior Legal Officer (part-time)	Ms Zhen Ye (11 January 2010 – 28 April 2010)
Senior Legal Officer (part-time)	Ms Bridget Quayle (from 19 April 2010)
A/g Legal Research Officer (full-time)	Ms Susannah Webb (5 May 2009 – 28 October 2009)
A/g Legal Research Officer (full-time)	Ms Judi Teesdale (11 January 2010 – 29 March 2010)
A/g Project Officer (full-time)	Ms Ruba Rashid
Research Officer (full-time)	Ms Bethany Wellings (from 25 January 2010)
Administrative Officer (part-time)	Ms Teagan Hore
Graduate (full-time)	Ms Saskia Van Zanen (from 7 June 2010)
Summer Clerk (full-time)	Ms Ursula Gwynn (23 November 2009 – 19 March 2010)

Contact details

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4. MEETINGS AND EVENTS

Council Meetings

NADRAC held four council meetings during 2009–2010.

Canberra – 12 August 2009

NADRAC's 48th Council Meeting was held on 12 August 2009 at the Commonwealth Attorney-General's Department in Canberra. The Council invited Ms Toni Pirani, Assistant Secretary of the Family Law Branch of the Attorney-General's Department to attend the meeting and discuss issues relating to mediator accreditation. Members also met with Mr Kym Duggan, the then Branch Head of the Indigenous Policy and Service Delivery Branch of the Commonwealth Attorney-General's Department. Mr Duggan briefed members on the progress of implementation of NADRAC's recommendations arising from the *Solid Work you Mob are doing* report.

Sydney – 3-4 September 2009

NADRAC held its 49th Council Meeting on 3-4 September 2009 at the Federal Court of Australia in Sydney. It was a special meeting to finalise the Council's report to the Attorney-General on its inquiry into ADR in the Federal Civil Justice System.

Canberra – 5 November 2009

NADRAC's 50th Council Meeting took place on 5 November 2010 at the Commonwealth Attorney-General's Department in Canberra. Mr Matt Minogue, Assistant Secretary, Access to Justice Division of the Attorney-General's Department met with the Council and discussed the Department's Access to Justice Report and recommendations.

Hobart – 26 March 2010

NADRAC's 51st Council Meeting took place on 26 March 2010 at the University of Tasmania in Hobart. The Council welcomed its new members, Dr Andrew Bickerdike and Justice Andrew Greenwood to the meeting. The Council also acknowledged the reappointment of Professor Murray Kellam and Mr Ian Hanger.

Mr Kym Duggan and Ms Carley Weiss of the Indigenous Policy and Service Delivery Branch were invited to join the meeting by phone and provide an update on the progress of implementation of NADRAC's recommendations.

At this meeting, the Council hosted an informal morning tea for academics from the University of Tasmania's Law School.

Report Launches

Launch of 'Solid Work you Mob are doing' Report

NADRAC in conjunction with the Federal Court of Australia launched a report called *Solid Work you Mob are doing: Case Studies in Indigenous Dispute Resolution and Conflict Management in Australia* on 4 September 2009.

This important report presents the research findings of an investigation into effective practices for managing conflict involving indigenous people. Based on this report, NADRAC has prepared recommendations for the Attorney-General's consideration.

The report was launched by the Attorney-General, the Hon Robert McClelland MP at the Federal Court in Sydney.

The Chair of NADRAC, Professor the Hon Murray Kellam AO, Professor Mick Dodson AM and the then Chief Justice the Hon Michael Black AC also spoke at this event.

The launch was attended by NADRAC members, the Federal Court's project team, judiciary and senior staff from the federal and state courts, representatives from the Attorney-General's Department, representatives from state departments of justice, legal professionals, indigenous policy officers and dispute resolution providers.



Professor Murray Kellam AO with Professor Mick Dodson AM, the then Chief Justice Michael Black AC and The Hon Robert McClelland MP at the Launch in Sydney on 4 September 2009

Launch of 'Resolve to Resolve' Report

On 4 November 2009, the Attorney-General, the Hon Robert McClelland MP launched NADRAC's report called *The Resolve to Resolve – Embracing ADR to improve access to justice in the federal jurisdiction* at Parliament House in Canberra.

The report is the result of an inquiry into the use of ADR in the federal civil justice system. It contains 39 recommendations focusing on:

- Strategies to encourage greater use of ADR
- Achieving greater consistency in ADR
- Improving public and professional awareness of ADR
- Mechanisms to provide quality ADR services
- Using ADR techniques in court and tribunal processes; and
- Using ADR in government disputes



Professor Murray Kellam AO with the Attorney-General, The Hon Robert McClelland MP at the Launch in Canberra

The Attorney, in his address, announced that he would be asking NADRAC to undertake further work arising from the report, including:

- preparation of a statement of key national ADR principles together with a supporting guide for users of different ADR services
- investigation of the issues of confidentiality, inadmissibility and conduct obligations for participants and practitioners in different ADR processes, and

- preparation of a model dispute management plan for use by government agencies.

The launch was attended by over 70 people including the Hon Sir Laurence Street AC KCMG QC, the Hon John Faulks, Deputy Chief Justice, Family Court of Australia and Mr Graeme Neate, President, National Native Title Tribunal.

Seminar on ADR

NADRAC held an informal lunchtime seminar on 25 March 2010 at the University of Tasmania in Hobart. Professor Murray Kellam and Mr Stephen Lancken presented on ADR and NADRAC's current work. At the end of the presentation, facilitated discussions with students and academics took place.

Federal Dispute Resolution Roundtable

NADRAC held a Federal Dispute Resolution Roundtable on 8 February 2010 to consult with stakeholders on the preparation of a model Dispute Management Plan for federal Government Agencies.

The Roundtable took place at the Attorney-General's Department in Canberra. Attendees comprised of a broad cross-section of Commonwealth departments and agencies, including service delivery, regulatory and decision making agencies, portfolio agencies, government legal services providers and other relevant external stakeholders.

Family Law Roundtable

NADRAC convened a Roundtable on Integrity of ADR and Family Law on 20 May 2010 at the National Portrait Gallery in Canberra. It was attended by the Attorney-General's Department's Family Law Reference Group and other family law experts.

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 2009-2010 (including secretariat travel costs but not other secretariat costs) is as follows:

<u>Item</u>	<u>Expenditure 2009/2010</u>
Sitting fees	\$7,155.59
Training and conferences	\$2,637.00
Meeting costs	\$3,954.00
Domestic Airfares	\$24,376.00
Travelling Allowance	\$12,519.00
Accommodation	\$291.00
Car/Taxi hire	\$4,771.00
Car Parking	\$150.00
Printing	\$8,538.00
Stationery and Consumables	\$139.00
Communication Charges	\$1,399.00
Postage/ Mailing	\$9.00
Other	\$196.00
Total	\$66,134.59