

NADRAC Notes – 10: August 2004

A note from the chair

This, the 10th edition of *NADRAC Notes*, provides information about NADRAC's recent activities in areas such as mediator accreditation, court referral to ADR, Indigenous dispute resolution, Government agency use of ADR, ADR legislation and ADR research. As you can see from the information in this newsletter, the council has maintained an impressive work schedule since the November 2003 newsletter.

My thanks go to the previous chair of NADRAC, Professor Laurence Boule, to council members and to the secretariat. In particular, I would like to thank those members whose terms expired this year: Alan Campbell, Helen Bishop, Dr Mary Edmunds, Barbara Filipowski and the Hon John Hannaford. I also welcome five new members to the council: Josephine Akee, Fabian Dixon SC, Ian Hanger QC, Greg Hansen and Dr Gaye Sculthorpe. Their skills will complement those of continuing members: Ian Govey, Federal Magistrate Norah Hartnett, Warwick Soden, Professor Tania Sourdin, John Spender QC and Lynn Stephen.

It is heartening to see alternative dispute resolution being embraced in so many diverse fields ranging from courts and tribunals, organisational disputes, customer complaints, family conflict, commercial litigation and land management. Like ADR itself, NADRAC will continue to face many new challenges and opportunities in the months ahead. We look forward to working with others to promote the further development of alternative dispute resolution in Australia.

Justice Murray Kellam

New electronic notification service

NADRAC has introduced an electronic notification service (*e-Notes*) which will enable us to give you up to date news of NADRAC's activities initiatives and publications, as well as direct links to Internet materials. This service will also make it easier to add or remove your name from our list.

Future newsletters will therefore be provided electronically rather than in printed form.

In order to receive future advice about NADRAC materials, simply subscribe to e-Notes by sending an e-mail to:

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If you later wish to remove your name from the list, send an e-mail to same address and type: **'unsubscribe etc'**.

If you do not have access to e-mail services and would like to receive printed notices about new material, please complete the form at the end of this newsletter.

New members

The Attorney-General has appointed five new members to NADRAC. The new members are Ms Josephine Akee, Mr Fabian Dixon SC, Mr Ian Hanger QC, Mr Greg Hansen and Dr Gaye Sculthorpe.

Ms Josephine Akee is a Torres Strait Islander Family Consultant with the Family Court of Australia in Cairns. Ms Akee has been a member of the Family Law Council since 2002 and has been a member of the Queensland Women's Consultative Group (1995), the Torres Strait Islander Steering Group of National Prevention of Child Abuse and Neglect (1995-96) and the Queensland Taskforce on Women and the Criminal Code (1998-99).

Mr Fabian Dixon SC is a prominent family lawyer in Hobart. 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 Hanger QC is a leading commercial dispute resolution practitioner in Brisbane. He is an accredited ADR specialist with the Bar Association of Queensland, 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 and a member of the panel of conciliators for the International Centre for Settlement of Investment Disputes. Appointed Queen's Counsel in 1984, Mr Hanger was chair of the 1988 Committee of Inquiry into the Industrial Conciliation and Arbitration Act and was Senior Counsel assisting the 1988 Parliamentary Judges Commission of Inquiry and of the 1997 Connolly/Ryan Inquiry into the effectiveness of the Criminal Justice Commission.

Mr Greg Hansen 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, and has trained as a commercial and personal mediator. He achieved the rank of 2nd Lieutenant in the Australian Army and has been active in community affairs, including as an Alderman and Councillor with Newcastle City Council.

Dr Gaye Sculthorpe is a full time member of the National Native Title Tribunal and has been involved in the mediation of native title applications in Queensland, New South Wales and Victoria and is a member of the Tribunal's Agreement-Making Strategy Group which produced a guide on mediating native title applications. She is a Member of the Australian Heritage Council and has previously held senior positions at Museum Victoria.

Mediator accreditation

On 2 July 2004, NADRAC facilitated a workshop on mediator accreditation at the 7th National Mediation Conference in Darwin. NADRAC provided an overview of the responses to its March 2004 paper *Who says You're a Mediator: Towards a National System for the Accreditation of Mediators* and later facilitated an interactive workshop. The workshop explored issues such as what mediators do, how they know when they are doing well, how they gain recognition for their work, and how complaints and compliments can be made about them.

The responses to NADRAC's paper and a report on the workshop are available on NADRAC's web-site at:

<http://www.nadrac.gov.au/www/disputeresolutionHome.nsf/HeadingPagesDisplay/Standards?OpenDocument>

Both the written responses to the NADRAC paper and the comments at the workshop indicated overwhelming support for the development of national system for mediator accreditation. Many issues remain to be resolved, however, such as ensuring that any accreditation process is inclusive of, and accessible to, diverse groups in the community.

Ongoing discussion on mediator accreditation is therefore vital, especially as many people could not attend the Darwin conference. On 29 June, the Attorney-General announced a grant of \$30,000 to the National Mediation Conference Limited to allow it to build on the outcomes of the accreditation workshop by consulting with relevant professional and industry groups. (The National Mediation Conference Limited – NMCL - is the corporate body which runs the biennial mediation conferences). NMCL is required to provide the Attorney-General's Department with a consultation plan by the end of September. The contact for the National Mediation Conference is dee.mcIntosh@nt.gov.au

Indigenous dispute resolution

NADRAC has continued a project aimed at developing guidelines and recommendations that will support the provision of accessible, fair, effective and sustainable dispute resolution programs and services to Indigenous people. Consultative forums with Indigenous people have been held in Alice Springs (June 2003), Brisbane (November 2003), Melbourne (March 2004) and Broome (July 2004). Further forums are planned in 2004-2005. A national consultative group of Indigenous dispute resolution practitioners has also been formed to guide the project. Our thanks to all those who have participated in these consultations.

NADRAC wishes to ensure that its work in this area is informed mainly by Indigenous experience in dispute resolution. Any guidelines or principles therefore would be developed through a 'ground up' rather than 'top down' approach. NADRAC has, however, affirmed several core philosophies and principles which guide its work and provide a starting point for consultation. These include:

- A. There needs to be flexibility and diversity in dispute resolution processes and approaches, combined with the development of standards that ensure services of a high quality.
- B. Dispute resolution services should aim to be accessible to all groups in the community. Barriers to using such services need to be identified, and steps taken to eliminate these barriers.
- C. Dispute resolution services need to work towards fairness in procedure (or a 'level playing field') so that dispute resolution processes do not disadvantage particular groups or individuals as a result of culture, gender, age or other differences. It is, however, important to avoid stereotypes or generalisations about the need of particular groups in the community.
- D. Accessibility and fairness require dispute resolution service providers to look at all aspects of their service, including the cultural effectiveness of the dispute resolution processes themselves, the training of practitioners and the recruitment of, and support for, practitioners from diverse backgrounds.
- E. There needs to be broad community involvement in dispute resolution services through inclusive consultative processes, and, where appropriate, community governance or ownership of dispute resolution services. Indigenous people need to be involved directly in designing and developing dispute resolution processes and services that are provided by or for them.

NADRAC's project is being undertaken in close cooperation with a related project being undertaken by the Native Title Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) – see Indigenous Facilitation and Mediation Project at www.aiatsis.gov.au.

ADR legislation

NADRAC has undertaken a review of alternative dispute resolution provisions within Commonwealth acts. The review will form the basis of a guide to developing ADR provisions in future legislation.

To assist NADRAC to undertake this review, a database is being developed on current Commonwealth statutory provisions. The database categorises legal issues affecting ADR, such as:

- powers to refer cases to ADR
- obligations on parties to participate in an ADR process
- the evidentiary status of communications in an ADR process
- enforceability of outcomes, and

- the accreditation, immunities and professional duties of ADR practitioners.

It is envisaged that the database will be further developed with a view to making it available as a resource to other agencies and interested persons.

In addition, a summary of Commonwealth, State and Territory legislative treatment of mediator accreditation has been prepared by the NADRAC secretariat and is available on the web-site at

<http://www.nadrac.gov.au/www/disputeresolutionHome.nsf/HeadingPagesDisplay/Legislation?OpenDocument>.

Court referral to ADR

On 4 March 2004, NADRAC and the Australian Institute of Judicial Administration (AIJA) launched a joint paper on *Court Referral to ADR: Criteria and Research*. The report, which was authored by Associate Professor Kathy Mack of Flinders University, built on previous work by both the NADRAC and the AIJA. It aimed to identify factors or criteria on which courts and tribunals could base decisions to refer a dispute to ADR.

The paper has proved to be a very useful resource for judicial officers, court administrators, policy makers, researcher and dispute resolution practitioners. The paper is available:

- in electronic form on the NADRAC web-site at <http://www.nadrac.gov.au/www/disputeresolutionHome.nsf/HeadingPagesDisplay/Criteria?OpenDocument>
- or in hard copy from the Australian Institute of Judicial Administration, Level 1, 472 Bourke Street, Melbourne, VIC 3000, or e-mail Gregory.Reinhardt@law.monash.edu.au.

Government agency use of ADR

In NADRAC's view ADR can assist government agencies to reduce the financial and other costs of litigation associated with their business dealings. This in turn enables the Government to take a lead role in preventing, resolving and managing business disputes.

In a response to the Attorney-General's Department's *Review of the Legal Services Directions Issues Paper*, NADRAC recommended that changes to the 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.

The submission is available on NADRAC's web-site under *Publications*.

<http://www.nadrac.gov.au/www/disputeresolutionHome.nsf/HeadingPagesDisplay/Publications?OpenDocument>

ADR research

In March 2004, published a web-based resource paper for ADR researchers, which built on the ADR research round table facilitated by NADRAC in February 2002. The paper is available at:

<http://www.nadrac.gov.au/www/disputeresolutionHome.nsf/AllDocs/RWP65F8499A783B8071CA256E5400026D27?OpenDocument>

NADRAC will be convening a second national ADR research forum (round table) on:

**Friday 25 February (all day) and Saturday 26 February (morning) 2005
at Brookman Hall, City East Campus, University of South Australia, cnr Nth
Terrace and Frome Rd, Adelaide.**

(Our thanks to Dale Bagshaw and Ann Braybon, University of South Australia, for organising the venue.)

The forum aims to optimise research in ADR by promoting information sharing and collaborative effort among those involved in conducting or commissioning ADR research and evaluation. As with the February 2003 round table in Melbourne, there is no charge for attending the forum but participants are expected to cover their own travel costs. If you are interested in attending, please assist us to plan the forum by e-mailing an expression of interest (by 17 December 2004) to nadrac@ag.gov.au. The expression of interest should contain:

1. a key research question or area that you would like to discuss with others
2. relevant background material that can be circulated to participants prior to the forum, and
3. your contact details.

Other submissions

NADRAC's comments on:

- the Standing Committee on Family and Community Affairs report on its inquiry into Child Custody Arrangements in the Event of Family Separation, and
- the Attorney-General's Department's *Federal Civil Justice System Strategy Paper*

are available on NADRAC's web-site. See the 'Publications' page or go to:

<http://www.nadrac.gov.au/www/disputeresolutionHome.nsf/HeadingPagesDisplay/Publications?OpenDocument>

Other events and links

Business ADR

A summary of the papers and workshops at NADRAC's 2003 Conference: *ADR: A Better Way to Do Business* is now available on the NADRAC web-site – see *ADR in Business* page, or go to

<http://www.nadrac.gov.au/www/disputeresolutionHome.nsf/AllDocs/RWP7CEF5A6056E3BDACCA256E760007D470?OpenDocument>.

On-line ADR

Papers from the UN Forum on On-Line Dispute Resolution held in Melbourne on 5-6 July 2004 are available from www.odr.info. NADRAC was involved as a member the site committee for this conference, and the director of the secretariat delivered a paper at the forum.

National Mediation Conference

Papers from the 7th National Mediation Conference are available at www.mediationconference.com.au

Mawul Rom Project

The Mawul Rom Cross Cultural Mediation and Leadership Training Project, which commenced with a training workshop at Elcho Island from 20-27 June 2004, will be conducting a series of seminars around Australia.

For more details about the project and the seminars visit <http://www.wukindi.com/> or e-mail paul.tolliday@mawul.com.

NADRAC meetings

NADRAC will next be meeting in Hobart on 23-24 September 2004 and will be holding a forum on the Thursday 23 September from 5pm to 7pm. ADR practitioners and others with an interest in alternative dispute resolution are invited to attend the forum. Further details are available from the NADRAC secretariat.

The final meeting for 2004 will be on 25-26 November (venue to be confirmed).

The first meeting in 2005 will be on 24 February in Adelaide (to coincide with the ADR research forum).

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