



NADRAC Notes

Note from the Chair

Since our last newsletter, a revitalised Council has been planning its forthcoming activities in the light of current dispute resolution trends and societal pressures. This newsletter is to inform you about NADRAC's recent activities and plans for the future.

As required under our charter, we have provided to the Attorney-General a forward work plan for 2002 and beyond. A summary is included in this newsletter. The work plan addresses the five key priorities that members have identified. These are the effective use of ADR by courts and tribunals, promoting the appropriate use of ADR, enhancing quality and consistency in ADR, supporting diversity and innovation in ADR, and improving ADR research, evaluation and data collection. Eight separate projects are now under way. As this newsletter shows, significant progress has already been made in several of these projects.

Since our last newsletter, we have launched a brochure on ADR terms, *What is ADR?*, and are about to launch a discussion paper on ADR terminology. We have collated statistics on ADR in Australia and have placed these on our web-site. We have drafted and published principles in relation to good practice on information technology and dispute resolution.

We have prepared submissions on primary dispute resolution in the family law system, on ADR in e-commerce and on ADR research.

Council held a meeting in Canberra in February and will be meeting in Perth in June. Public forums precede each of these meetings. Such consultations with ADR practitioners and other groups with an interest in ADR contribute enormously to our work. They ensure we are kept up to date with local developments and provide us with diverse perspectives on current ADR issues.

I am delighted to welcome three new members to NADRAC who have been appointed by the Attorney-General. Prof. Tania Sourdin, Mr John Spender QC and Ms Lynn Stephen will greatly enhance Council's expertise and diversity. I also wish to take the opportunity to thank outgoing member, John Steele, for his contributions to Council, especially in relation to ADR research.

We look forward to the continuation of a busy and rewarding year. I hope that the information in this newsletter is of interest. I encourage you to go to our web-site or contact the NADRAC secretariat for more details.

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The National Alternative Dispute Resolution Advisory Council (NADRAC) advises the Commonwealth Attorney-General on issues affecting ADR. NADRAC members are drawn from diverse backgrounds including courts and tribunals, community services, government agencies, private business and academia.

Work plan 2002

NADRAC's work plan for 2002 is summarised below. The work plan identifies key issues affecting ADR and outlines specific projects designed to address these issues. The full work plan is available from <http://www.ag.gov.au/aghome/advisory/nadrac/workplan2002/index.htm>

Issues

• **Effective use of ADR by courts and tribunals**

Diverse approaches to court connected ADR have been developed in a range of jurisdictions. Of particular importance is judicial referral to ADR: what matters should be referred (criteria), when should referral take place (timeliness) and to whom referrals should be made.

• **Promoting the appropriate use of ADR**

ADR practitioners and organisations have long recognised the need to enhance community and business awareness of ADR through improved referral practices and effective marketing strategies.

• **Enhancing quality and consistency in ADR**

Standards for ADR services, including accreditation of practitioners or organisations, are continuing issues. Appropriate referral criteria and consistent terminology are also central to service quality. The effectiveness of ADR also depends on a coherent legal basis dealing with matters such as immunities for ADR practitioners and the confidentiality of ADR processes.

• **Supporting diversity and innovation in ADR**

ADR's key strengths include diversity, innovation and accessibility. These strengths are reflected in a wide range of emerging approaches to ADR, such as on-line ADR, conferencing, diversionary programs, cross-cultural practices and Indigenous ADR programs.

• **Improving ADR research, evaluation and data collection**

Finally, the development of effective ADR policies and practices requires useful and valid information. A key priority is improved data collection in ADR, including statistics on ADR conducted in courts, tribunals and other agencies.

Projects

To address these issues, NADRAC has initiated a number of projects. Each project is managed by a committee comprising several council members and secretariat staff. The project plans and time lines below are not 'set in concrete'. They will be reviewed regularly in the light of developments.

• **Statutory provisions for ADR**

In collaboration with the ADR Committee of the Law Council of Australia, NADRAC will audit Commonwealth, State and Territory legislation, and recommend means for achieving greater clarity and consistency in statutory provisions for ADR. NADRAC will also work

with the Attorney-General's Department on issues relating to Primary Dispute Resolution (PDR) provisions in the Family Law Act.

• **Terminology for ADR**

A brochure, based on NADRAC's original definitions paper, was released in March. A discussion paper on ADR terminology is about to be released.

• **Referral to ADR**

NADRAC will continue to review research and case law relating to criteria for referral to ADR, and will identify effective referral practices. A draft guide to ADR referral will be released early in 2003.

• **Community and business awareness of ADR**

NADRAC will be examining options for promoting community and business awareness and consider the feasibility of a major public conference in 2003 to pursue these goals.

• **Indigenous ADR**

NADRAC will identify policy and practice issues in relation to the use of ADR by Indigenous people. The first step will be a preliminary audit to identify relevant studies and stakeholders.

• **Technology and ADR**

A draft paper on technology and ADR was placed on NADRAC's web-site in March 2002. NADRAC will also continue its examination of ADR in e-commerce (a submission on this matter is also available on NADRAC's web-site).

• **ADR research, evaluation and data collection**

A summary of ADR statistics in courts and other agencies was placed on NADRAC's web-site in May 2002. A paper on means for improving the quality and consistency in statistical information will be released early in 2003.

New members

The Attorney-General, Daryl Williams has announced the appointment of three new members to NADRAC. The new members are Professor Tania Sourdin, Mr John Spender QC and Ms Lynn Stephen.

Ms Stephen is coordinator of the Community Mediation Service in Bunbury, Western Australia. This service deals with a range of neighbourhood and family matters. Ms Stephen has qualifications in nursing and health science, has completed a graduate certificate in family mediation and has undertaken other mediation training courses in Australia and the United States. She has also received a Churchill Scholarship to study family mediation in the United States and the United Kingdom. Ms Stephen has made a valuable contribution as a member of the Family Law Pathways Advisory Group and brings to NADRAC a regional perspective on ADR issues.

Mr Spender QC was appointed Queen's Counsel in 1974 and has sat as an Acting Justice of the NSW Supreme Court. He has practised extensively in corporate and

commercial law and other areas of litigation. He served four terms as a member of the Federal Parliament until 1990 and was Australian Ambassador to France between 1996 and 2000. Mr Spender has undertaken mediation training with LEADR, Bond University and Harvard Law School; he will return to Harvard in July 2002 to assist in mediation training. He is a mediator in private practice. Professor Sourdin is currently Director, Academic Quality and Programs, in the College of Law and Business at the University of Western Sydney and is soon to take up a new position as Professor, Law and Dispute Resolution, at La Trobe University. She is a member of the Administrative Appeals Tribunal and the NSW Fair Trading Tribunal and is a mediator with the NSW Retail Leases Dispute Unit. Professor Sourdin has broad expertise in alternative dispute resolution (ADR) and has researched and published extensively in the area. She also has specific experience in business and consumer ADR.

Council is appreciative of the work of an outgoing member, John Steele, formerly of Community Mediation Services in South Australia. John was a contributor to several NADRAC projects. As convenor of the research committee, he ensured that this issue remained a high priority. The new appointments increase the size of Council to 12 members. Other members are Prof. Laurence Boulle, (Chair), Bond University; Ms Helen Bishop, manager of the Aboriginal ADR Service in WA, Mr Alan Campbell, a family mediation practitioner and researcher, Dr Mary Edmunds, a Member of the National Native Title Tribunal, Ms Barbara Filipowski, Secretary and General Counsel, Sydney Ports Corporation, Mr Ian Govey, General Manager Civil Justice and Legal Services, Attorney-General's Department, the Hon. John Hannaford, former NSW Attorney-General and now an ADR practitioner in private practice, Ms Norah Hartnett, a Federal Magistrate, and Mr Warwick Soden, Registrar of the Federal Court of Australia.

Standing for Standards

NADRAC has established a virtual bulletin board on ADR standards, called Standing for Standards (<http://www.nadrac.gov.au/aghome/advisory/nadrac/bullboard.htm>). Excerpts are contained below. The bulletin board contains information and updates on topics such as:

- Examples of how NADRAC's standards framework is being used
- Progress on NADRAC's recommendations
- New standards being developed or contemplated - Australia or overseas
- Cooperative efforts between ADR organisations to promote quality in ADR

- Forthcoming meetings on ADR standards.

Meetings and presentations

30 November 2001: David Syme, Director of the NADRAC Secretariat gave a presentation on ADR standards at the Asia-Pacific Mediation Forum, Adelaide See: <http://www.nadrac.gov.au/aghome/advisory/nadrac/asiaforum/Asiaforum.htm>

Mediation competencies

As part of its review of the Community Services Training Package (CSTP), the peak training body for community services, Community Services and Health Training Australia, has proposed a vocational qualification (Certificate IV) in Community Mediation, and has drafted competencies for community mediators. See <http://www.cshta.com.au/> to obtain more information.

Institute of Arbitrators and Mediators Australia

In its November 2001 newsletter, the Institute of Arbitrators and Mediators Australia (IAMA) notes that 'it has been meeting with representatives of other ADR organisations ... to explore the development of a uniform approach to [the matters raised in NADRAC's report]. In addition the ACT Chapter has been preparing a draft code of practice for consideration and approval by [the IAMA] Council'.

LEADR

LEADR has also taken an active interest in ADR standards [and] 'is a strong proponent of the creation of standards in the accreditation of ALL ADR disciplines ...LEADR has, with IAMA and others, been discussing the possibility of several ADR organisations agreeing a set of standards that can be applied to some ADR disciplines. The nature of the breadth of ADR as a collective term makes this a challenging process.'

More news?

NADRAC invites contributions for the bulletin board. Either e-mail - nadrac@ag.gov.au, or send to NADRAC Secretariat, Robert Garran Offices, BARTON ACT 2600.



Attorney-General meets with NADRAC, February, 2002

New publications

Techno-ADR

NADRAC has prepared a draft paper outlining general principles on information and dispute resolution. We invite comments on the paper, which is at http://www.nadrac.gov.au/aghome/advisory/nadrac/Technology_ADR2.htm.

Statistics

NADRAC has collated ADR statistics from the annual reports of courts, tribunals, statutory agencies and ADR organisations. These have been checked with the organisations concerned and are available at <http://www.nadrac.gov.au/aghome/advisory/nadrac/research.htm>.

Terminology

NADRAC has reviewed its 1997 paper, *Alternative Dispute Resolution Definitions*, and has launched a brochure version of the paper called *What is ADR?*.

A discussion paper on issues affecting ADR terminology is about to be released. See <http://www.nadrac.gov.au/aghome/advisory/nadrac/definitions.htm>

Submissions - update

In November 2001 NADRAC made a submission to Treasury's Expert Group on e-commerce in response to the Group's discussion paper on ADR in electronic commerce. See: <http://www.nadrac.gov.au/aghome/advisory/nadrac/ecommerce/welcome.htm>.

In January 2002 NADRAC made a submission in response to the Attorney-General's Department consultation paper proposing a quality framework for primary dispute resolution (PDR) under the Family Law Act 1975. See: <http://www.nadrac.gov.au/aghome/advisory/nadrac/submission/submission.htm>

Following NADRAC's recommendation the Attorney-General has asked his Department to undertake a review of legislative provisions covering PDR in the family law system; NADRAC will participate in this review.

NADRAC has submitted research proposals to the AIJA (Australian Institute of Judicial Administration). The proposals concern criteria for court referral to ADR and performance measurement of court ADR.

Council meetings

Canberra

NADRAC met in Canberra on 7 and 8 February 2002. The Attorney-General addressed the meeting and discussed Council's future work plan. NADRAC members also visited to Courtroom of the Future project at the University of Canberra.

On 6 February, 40 people attended a public forum on ADR convened by NADRAC. The forum provided information on NADRAC's activities, sought participants' views on significant issues affecting ADR and encouraged sharing of information about developments in ADR.

Notes from forum are available from <http://www.nadrac.gov.au/aghome/advisory/nadrac/adrforum/IssuesForum.htm>

Perth

NADRAC's next meeting will be in Perth on 13 and 14 June. This is the first time that a council meeting has been held in Western Australia.

A public forum is to be held at Exchange Plaza Building in Perth from 5 to 7pm on 12 June. Attorney-General Daryl Williams and Chief Justice David Malcolm will address the forum (see <http://www.nadrac.gov.au/aghome/advisory/nadrac/perthflyer/Flierprelim.htm>)



Professor Laurence Boule addresses the ADR Forum in Canberra

National Alternative Dispute Resolution Advisory Council Publications

Title	Type	Date	Web formats*			Printed copies available#
			html	pdf	word	
ADR Terminology	Discussion paper	June 2002	html	pdf	word	-- (43pp)
ADR Statistics	Compendium	May 2002		pdf	word	
What is ADR?	Brochure	March 2002	html	pdf	word	-- (bulk copies)
Information technology and dispute resolution	Draft paper	March 2002	html			
PDR Quality Framework	Submission	Jan 2002	html	pdf	word	
ADR in e-commerce	Submission	Nov 2001	html	pdf	word	
A Framework for ADR Standards	Report	April 2001	html	pdf	word	-- (152pp)
On Line ADR	Background paper	Jan 2001	html		rtf	
Letter of Advice to the Attorney-General on Parenting Plans	Report	March 2000	html			-- (16pp)
Submission on Franchising Code	Submission	March 2000	html			
The Development of Standards for ADR	Discussion Paper	March 2000		pdf		-- (150pp)
A Fair Say	Guide	Sept 1999		pdf		-- (32pp)
Use of ADR in the Federal Magistracy	Report					
Part 1		March 1999	html			
Part 2 (Regulations and Rules)		Dec 1999	html			
Issues of Fairness and Justice in Alternative Dispute Resolution	Discussion Paper	Nov 1997		pdf		-- (205pp)
Primary Dispute Resolution in Family Law	Report	March 1997		pdf		-- (78 pp)
Annual Reports	Report	2000/2001	html			-- (previous reports available)
Notes from forums	Working papers	Since 2000	html		word	
NADRAC Notes	Newsletter	Periodical		pdf		

* May be downloaded from www.nadrac.gov.au. If you are unable to use the Internet and want printed information sent to you, please contact the NADRAC secretariat on 02 6250 6272.

printed publications may be ordered by filling in the form below

Mail to: NADRAC Secretariat, Robert Garran Offices, BARTON ACT 2600, or Fax: (02) 6250 5911

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