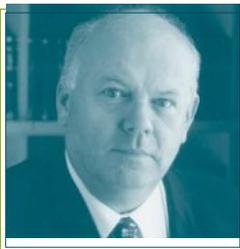




NADRAC notes

ISSUE NO 9 NOVEMBER 2003

NEW CHAIR OF NADRAC ANNOUNCED



Justice Kellam

Attorney-General Phillip Ruddock has announced the Honourable Justice Murray Kellam's appointment as the new chair of the National Alternative Dispute Resolution Advisory Council (NADRAC). His appointment will be for a term of three years and starts on 1 January 2004.

Justice Kellam brings considerable expertise to NADRAC. He is a Justice of the Supreme Court of Victoria and a former president of the Australian Institute of Judicial Administration and

of the Victorian Civil and Administrative Tribunal (VCAT). Justice Kellam has been a strong supporter of alternative dispute resolution (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.

Justice Kellam will succeed Professor Laurence Boulle who has been chair of NADRAC since 1998. Under Professor Boulle's

leadership NADRAC has made substantial contributions to the development of alternative dispute resolution in Australia. Professor Boulle earlier this year agreed to a temporary extension to his term to enable him to lead NADRAC's successful conference on ADR in business, which was held in Sydney in September.

NADRAC's membership reflects the diversity in alternative dispute resolution.

Justice Kellam will lead eleven other members of the council, namely Ms Helen Bishop (Curtin University), Mr Alan Campbell (University of SA), Dr Mary Edmunds (ANU), Ms Barbara Filipowski (Sydney Ports Corporation), Mr Ian Govey (Attorney-General's Department), the Hon John Hannaford (private practitioner), Federal Magistrate Norah Hartnett, Mr Warwick Soden (Federal Court) Professor Tania Sourdin (La Trobe University), John Spender QC (private practitioner) and Ms Lynn Stephen (Bunbury Community Mediation Service).

'I look forward to NADRAC continuing to contribute to the development of high quality alternative dispute resolution services for all Australians', Mr Ruddock said.

A PARTING NOTE



This is the last edition of NADRAC Notes during my chairmanship and it is worth reflecting on some of the achievements of the past nearly six years.

Given its nature as an advisory body to the Australian Attorney-General, much of NADRAC's work has a low profile. However the council has also attempted to talk to the broader ADR community and its standards report of 2001

has been used by numerous ADR service-providers and is now a standard reference in the literature. An important imminent publication is that on criteria for court referral to ADR, the result of a combined NADRAC/AIJA project under the authorship of Professor Kathy Mack and I have no hesitation in saying that this is the best writing available on this topic. There have been numerous other public manifestations of NADRAC's work and although the terminology paper was not received with passionate enthusiasm it did remind ADR adherents of the importance of definitional and boundary issues. I hope to be otherwise engaged when there is next an investigation into ADR definitions.

In recent years there has been a major change in the operations of NADRAC, emerging out of the extensive consultations undertaken prior to the standards report. There has always been a policy to invite ADR luminaries to make presentations at council meetings, and that practice has continued. In addition the council now conducts public forums, to coincide with its meetings, and these have been held in Perth, Adelaide, Melbourne, Canberra, Alice Springs and Brisbane to date. These occasions not only provide

input to the council but also allow for discussions among local ADR practitioners and theorists who might otherwise not have this engagement.

Another recent first for NADRAC was the Sydney conference on ADR in Business and I hope that this area will be well-served by the council in the future. There is always a difficult balancing act within the diversity of ADR and feedback from the diverse constituents is needed to keep the council focused on relevant topics.

As regards the future, NADRAC has an ambitious work program referred to elsewhere in these notes. In this regard it is edifying to see how much of NADRAC's work is being accessed by policy-makers and practitioners abroad, particularly in Europe where the urge to surge in ADR is particularly noticeable.

It remains to thank the many people with whom I have been associated on the council over the past years. Special mention should be made of the Director, David Syme, who has been of inestimable strength and support over the last three and a half years. It should also be noted that numerous officers in the Attorney-General's Department have been very supportive of NADRAC initiatives.

I am also delighted that Justice Murray Kellam will be my successor. Justice Kellam, who will assume office on 1 January 2004, has extensive experience in ADR matters and will be an excellent chair. I wish all members of the council the best for the future and look forward to encountering the products of their labours.

Professor Laurence Boulle

CONFERENCE ON BUSINESS ADR

The National Alternative Dispute Resolution Advisory Council (NADRAC) is encouraging Australian businesses to access, and make use of, the information which emerged from its highly successful conference in September this year.

Titled *ADR: a better way to do business*, the conference showcased effective ways to prevent, manage and resolve disputes and featured high profile speakers from many different business sectors. More than 180 business people, dispute resolution practitioners and other professionals attended the conference.

Feedback from participants was very positive and indicated that the conference successfully achieved its goals, which were to:

- demonstrate the benefits of ADR
- show how ADR can be implemented successfully in business practices, and
- enable participants to develop strategies that they could take back to their own businesses

Disputes can arise in the operations of any business, whether private or public. They may involve suppliers, contractors, customers, staff, government, boards, business partners or competitors. Disputes cost time and money. They can destroy important business relationships and reputations. They can even send businesses broke.

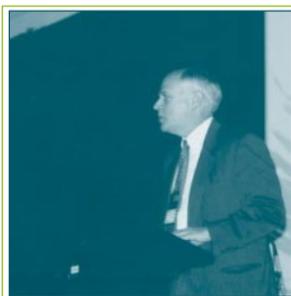
To help business avoid such scenarios the conference covered matters such as:

- the design and implementation of systems for workplace disputes
- the use of ADR processes in major projects and contracts
- the vital role played by industry based customer dispute resolution schemes and codes of practice involving small business
- innovative reforms in wholesaling markets to deal with business-to-business disputes.

The conference papers and other information about ADR can be accessed on the NADRAC website (www.nadrac.gov.au).



The conference opening by the Australian Attorney-General



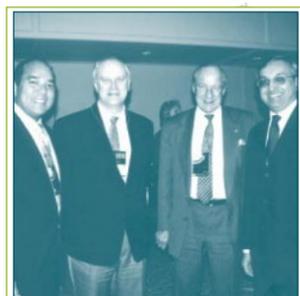
Welcome by NADRAC chair, Professor Laurence Boulle



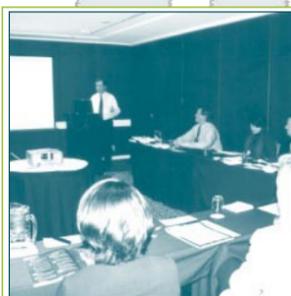
Anne Thomas from the World Bank provided a stimulating keynote address



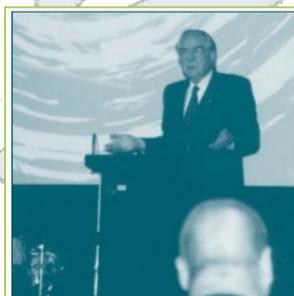
An interactive panel session facilitated by Shirli Kirschner of Resolve Advisors, with Phil Singleton (Chairman, SPAN), Michael Kay (Chief Operating Officer, AAMI), Simon Rice OAM (human rights lawyer) and Nicole Cullen (Deputy Chair, Superannuation Complaints Tribunal)



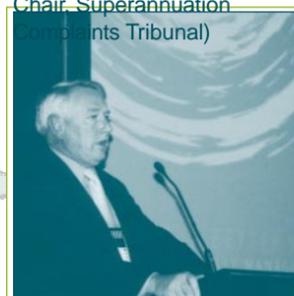
Distinguished guests at the conference: Mozelle Thompson (US Federal Trade Commissioner), Professor Laurence Boulle (Chair of NADRAC), Sir Laurence Street (Chair of International Legal Services Advisory Council) and Sitesh Bhojani (ACCC Commissioner)



There were 5 workshop streams at the conference



Dinner speaker the Hon. Michael Black AC, Chief Justice, Federal Court of Australia



The Hon. John Hannaford, Convenor of the NADRAC Conference Committee, closes the conference

INDIGENOUS DISPUTE RESOLUTION

NADRAC is conducting a series of forums with Indigenous people. The aim of the forums is to help NADRAC better understand, support and encourage the effective provision of dispute resolution services to Indigenous people by:

- learning about dispute resolution practices in Indigenous communities, including what has and hasn't worked
- hearing the opinions of Indigenous people on dispute resolution issues examined by NADRAC
- exploring opportunities to collaborate with Indigenous people on developing future approaches for improving the delivery of dispute resolution services to Indigenous people.

The forums also provide an opportunity for Indigenous practitioners to draw on each other's and on NADRAC's experience in dispute resolution practices.

The first forum was held in Alice Springs in June 2003 and the second in Brisbane in November 2003. Further forums will be conducted in 2004.

DISPUTE RESOLUTION TERMS

In June 2002, NADRAC released a discussion paper on ADR terminology. A summary of the responses to that paper was published on NADRAC's web-site in May 2003. In light of these responses and further consideration of the use of terms in dispute resolution, Council has revised its 1997 paper *Alternative Dispute Resolution Definitions*.

A new publication *Dispute Resolution Terms* was published on the web-site in September 2003. The document outlines NADRAC's views on terminology and also includes a glossary of terms that are commonly used in dispute resolution.

UNCITRAL

NADRAC has written to the Attorney-General expressing concern about one of the articles in the United Nations Commission on International Trade Law (UNCITRAL) Model Law for International Commercial Conciliation (see <http://www.uncitral.org/>). The article provides that, unless there is a specific condition that information be kept confidential, a conciliator may disclose information provided in a private session to any other party in the conciliation.

NADRAC does not support this provision as it is contrary to usual practice in Australia. Most Australian dispute resolution practitioners maintain the view that matters discussed in private session should remain confidential, unless the party making the disclosure directs otherwise. This practice ensures that a practitioner can fully explore each party's real interests, canvass options with them, reality test these options and discuss confidential matters that may impact on the resolution of the dispute. It is easy for a party in a dispute resolution process to err and reveal information which, with more careful thought, the party would wish to have kept confidential. Once the information is revealed, however, it cannot be recalled. The Australian practice protects parties from this kind of situation, which can result in damage to the interests of a party as a result of ill-considered disclosure.

ADR RESEARCH

NADRAC held a round table on ADR research in Melbourne in February 2003, where 51 people attended. The round table involved people engaged in ADR research, evaluation and data collection, as well as agencies that play a lead role on performance measurement and program evaluation.

The objectives of the round table were to:

- identify strategies for improving the quality and consistency of ADR research, evaluation and data collection
- maximise the impact current research effort through sharing information about current projects and approaches and developing links among those engaged in ADR research
- make suggestions on good practice in ADR research evaluation and data collection, which could form the basis for a NADRAC guide or paper on this issue.

NADRAC prepared a background paper which was provided to participants prior to the round table. A copy of the background paper may be obtained from NADRAC's web-site.

NADRAC is currently working on a resource paper on ADR research that will be structured around the key themes which emerged at the round table, namely:

- Context
- Goals and objectives
- Accessibility
- Effectiveness
- Clinical research
- Integration of research, policy and practice.

It is expected that a second research round table will be held towards the end of 2004.

JUDICIAL DISPUTE RESOLUTION

Judicial dispute resolution (or judicial ADR) is a term used to describe a range of dispute resolution processes, other than adjudication, which are conducted by judges or magistrates. An example is a judicial settlement conference. In conjunction with the Family Law Council and other interested agencies, NADRAC will be holding a forum on judicial ADR. The role of judges and magistrates in directly facilitating settlement of disputes has been a topical issue for some time. The proposed forum will help to clarify the ethical, practice and legal issues associated with judicial dispute resolution.

For further information, please contact the NADRAC secretariat.

ADR QUALITY AND ACCREDITATION

NADRAC will be holding a national workshop on the accreditation of mediators. The workshop will be part of the 2004 National Mediation Conference to be held in Darwin from 30 June to 2 July 2004. In preparation for this workshop, NADRAC will be seeking information about current developments in mediator accreditation. Further details will be provided in the new year.

OTHER MATTERS

REVIEW OF COMMUNITY JUSTICE CENTRES

Readers may be interested in the review by the NSW Law Reform Commission on *Community Justice Centres*. As part of the review, the commission has released an issues paper (IP 23) which may be obtained from <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/ip23toc>

STANDARDS AUSTRALIA

Standards Australia has released a draft revised Standard on Dispute Management (DR 03522) which is currently available for public comment. A pdf version of the draft can be downloaded (free of charge) from Standards Australia's website at the following link:

<http://www.standards.com.au/catalogue/script/Details.asp?DocN=AS428054832236>

A hard copy can also be purchased from the same link. The public comment period closes 29 January 2004.

SUBMISSIONS - UPDATE

In addition to its major projects, NADRAC has prepared a number of submissions on topical issues such as the proposed Family Law Rules 2004 and the Parliamentary Inquiry into Child Custody [shared parenting] Arrangements. These submissions are available on NADRAC's web-site.

COURT REFERRAL TO ADR

NADRAC and the Australian Institute of Judicial Administration (AIJA) are conducting a joint project on the topic of court referral to ADR and have engaged Assoc. Prof. Kathy Mack from Flinders University to prepare a paper on the issue. The paper will be published in the near future.

7TH NATIONAL MEDIATION CONFERENCE: DARWIN

The Seventh National Mediation Conference *True Talking, Forward Walking* will be held in Darwin from 30 June to 2 July 2004. Further details may be obtained from:

The Best Conference and Events Company
GPO Box 2541, DARWIN NT 0801
Telephone: 08 898 11875, Fax 08 89411939
caltamura@norgate.com.au
www.thebestevents.com.au

MEETINGS AND FORUMS

ADELAIDE 13-14 MARCH 2003:

NADRAC and the Family Law Council hosted a lunchtime forum on 13 March with judicial and court officers and the evening of 13 March, NADRAC members held an informal meeting with members of the South Australian Dispute Resolution Association.

ALICE SPRINGS 19-20 JUNE 2003:

This was the first council meeting held in the Northern Territory and the first held outside a major metropolitan area. NADRAC members also met with local agencies and practitioners and with Indigenous ADR practitioners and agencies.

SYDNEY 3 SEPTEMBER 2003:

NADRAC held a one day meeting in Sydney on 3 September 2003, immediately before its conference on business ADR.

BRISBANE/GOLD COAST 26-28 NOVEMBER 2003:

A forum with Indigenous ADR practitioners and agencies was held in Brisbane on 26 November and on 27 November NADRAC met with representatives of Queensland and Commonwealth courts and tribunals.

NADRAC's next meeting will be held in Melbourne on 4-5 March 2004, and its subsequent meeting in Darwin on 28-29 June 2004.

UN FORUM ON ON-LINE DISPUTE RESOLUTION

An international forum on dispute resolution is coming to Australia. On 5-6 July 2004, the University of Melbourne will be hosting the Third Annual Forum on Online Dispute Resolution in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific. The Forum will report on online dispute resolution activities at the regional and global level. ADR practitioners, lawyers, academics, government, IT, industry and e-commerce are all encouraged to attend. As a United Nations event, participation is free - however the number of participants from Australia will be limited to 50. Expressions of interest are available at www.psych.unimelb.edu.au/icrc.

SEASONS GREETINGS



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(Note: if you are unable to use the Internet and want printed information sent to you, please contact the secretariat)