

From: [Department of Infrastructure, Transport, Regional Services and Local Government]

Sent: Monday, 11 May 2009 5:57 pm

To: NADRAC

Subject: Comments from the Department of Infrastructure, Transport, Regional Services and Local Government

Dear Sir or Madam,

Thank you for giving this Department the opportunity to comment on the issues paper "Alternative Dispute Resolution in the Civil Justice System". We provide comments on issues raised in Chapter 7 of the Paper. This Department is defending a number of claims for damages

[...]

The two points in which this Department could provide input to the enquiry relate to the possible interaction between ADR and the provisions in Appendix C of the Legal Services Directions. In particular, that settlements should be in accordance with legal principle and practice which is expressed in the following way:

"A settlement on the basis of legal principle and practice requires the existence of at least a meaningful prospect of liability being established."

The paper comments that there seems to be a variation between agencies as what a meaningful prospect may mean; with further comments suggesting that some agencies or legal advisers set the bar too high.

[...]

Therefore there should be no meaningful prospect of liability being established in that action against the Commonwealth. However that conclusion does not seem to complement the suggestion in the paper that consideration should be given to settling claims which are not "spurious." There seems to be little doubt that from the perspective of the plaintiffs their contentions are not spurious.

Therefore we endorse the suggestion put forward in the paper that the Legal Services Direction be amended or have additional guidance provided.

We also concur that all agencies should look to legal service providers to be aware of ADR services and the Government's requirement to consider ADR.

[sig]