

ABS Response to NADRAC Issues Paper: Alternative Dispute Resolution (ADR) in the Civil Justice System

About the Australian Bureau of Statistics (ABS)

The ABS is Australia's official national statistical agency. It was established, as the Commonwealth Bureau of Census and Statistics, with the *Census and Statistics Act 1905* (CSA). The agency became the 'Australian Bureau of Statistics' in 1975 with the passing of the *Australian Bureau of Statistics Act 1975 (ABS Act)*. This Act also established the role of the Australian Statistician, and defined the functions of the ABS. The *ABS Act* gives the ABS a co-ordination function with respect to the statistical activities of other official bodies and the use of administrative data for statistical purposes.

The ABS assists and encourages informed decision making, research and discussion within governments and the community, by leading a high quality, objective and responsive national statistical service.

ABS Contact

If you require any further information on this response, please contact Denise Carlton, Acting Assistant Statistician, Office of the Statistician at denise.carlton@abs.gov.au or on 02 6252 5533.

General Comments

The ABS welcomes the opportunity to provide comments on NADRAC Issues Paper: Alternative Dispute Resolution in the Civil Justice System.

Generally, the ABS is not involved in many disputes, and it is highly unusual for the ABS to be involved in a dispute that evolves into a court case. Often if the ABS is involved in a court case, it is as a respondent, expert witness or third party, not as the instigator of the legal action.

For most disputes, the ABS sees litigation as the last resort, and is more likely to try alternative methods such as mediation to resolve the issue.

Response to Questions in Chapter 7: Use of ADR in Government Disputes

7.1 In what type of matter do/should Commonwealth agencies utilise ADR?

The ABS sees ADR processes as appropriate for resolving issues relating to people management, property, procurement, client services and other contracts.

7.2 What are the characteristics of disputes where it would be inappropriate for agencies to use ADR?

In conducting its surveys, the ABS seeks to establish positive relationships with respondents and to make participation as convenient as possible. The ABS always initially seeks the willing cooperation of respondents selected in its surveys, and the vast majority are happy to do so as they appreciate the value of the statistics to the community. Households and businesses are

chosen at random using a scientifically designed sampling process, and are representative of many other similar households or businesses. To maintain the reliability of the survey results, it is important that responses are obtained from all selected respondents. If a respondent refuses to participate the ABS seeks to positively gain their willing cooperation. Occasionally and as a last resort, the ABS may use the provisions in the *Census and Statistics Act 1905* to direct respondents to provide information.

In these cases the ABS would not see ADR as appropriate for handling matters relating to compliance with the *Census and Statistics Act 1905* (CSA). If a person, or business so directed does not comply with the direction, the ABS seeks to prosecute that person or business, particularly if that respondent is advocating public mischief. The ABS believes prosecution is the only appropriate response to non-compliance with the CSA. The ABS enjoys high community understanding and cooperation and as a result provides high quality statistics, however if community cooperation were to drop or if inaccurate information were to be provided, the quality and value of ABS statistics would be significantly eroded.

In addition, the CSA imposes very strict obligations on ABS to protect the secrecy of identifiable information provided to it by respondents. The ABS takes this obligation very seriously. The ABS enjoys a high level of community trust and cooperation because the community is confident that the information it provides to the ABS will be protected. If the ABS were to lose that confidence, then the community may not provide information to the ABS, or may not provide accurate information, both of which would reduce the quality of ABS statistics.

Section 19 of the CSA forbids past or present ABS officers from directly or indirectly divulging or communicating information collected under the CSA to another person, unless information is released in accordance with a determination or for the purposes of the Act. Section 19 also provides substantial penalties for any breach (a fine of up to 120 penalty units and/or 2 years imprisonment). If an ABS employee were to wilfully breach Section 19 of the CSA, the ABS believes prosecution of that employee would be the only appropriate response.

7.3 How can agencies improve their use of ADR processes?

The ABS does not have any comment on this issue.

7.4 To what extent do organisational barriers or legislative provisions inappropriately limit or prevent Commonwealth agencies' use of ADR? How can these be overcome?

The ABS does not have any comment on this issue.

7.5 To what extent would targeted guidance material or training for Commonwealth officers involved in ADR processes assist in the take-up of ADR, as well as in the quality of participation? What type of guidance material or training would be useful?

While the ABS does not generally instigate legal action, the ABS is supportive of ADR and would welcome education and training materials.

7.6 To what extent do Commonwealth agencies select legal representatives who are good litigators rather than skilled in the resolution of disputes? How can this be overcome?

The ABS does not generally instigate legal action, except as mentioned above. All ABS template contracts and MOUs contain dispute resolution clauses. To date, the ABS has been able to

successfully resolve commercial disputes through negotiation and has not needed to instigate other mechanisms such as mediation or litigation.

7.7 How can Government agencies find mediators? To what extent is assistance in this process required and how might this assistance be provided?

The ABS does not have any comment on this issue.