



National
Alternative
Dispute
Resolution
Advisory
Council

Annual Report

1996-97

**NATIONAL ALTERNATIVE DISPUTE RESOLUTION
ADVISORY COUNCIL**

ANNUAL REPORT

1996-97

Canberra

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ISBN

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The Attorney-General and Council
7 March 1997



L to R back: Quentin Bryce AO, Magdeline Fadjar, Oscar Shub, Richard Moss, Cate Wells, Kurt Noble. ***L to R centre:*** the Hon. Justice Mushin, Margaret Harrison-Smith, Adele Byrne, (Advisor to the Attorney-General), Dr Josephine Tiddy, Susan Gribben, Serena Beresford-Wylie. ***L to R front:*** Wendy Faulkes, Professor Hilary Astor (Chairperson), the Hon. Daryl Williams AM QC MP, Associate Professor Gay Clarke, Dr Gregory Tillett.

COUNCIL MEMBERSHIP

Members of NADRAC are appointed by the Attorney-General. Mr Richard Moss is an ex officio member of NADRAC by virtue of his position of Deputy Secretary in the Attorney-General's Department. The members of the Council during 1996/97* were:

Chairperson

Professor Hilary Astor

Abbot Tout Professor of
Litigation and Dispute
Resolution, University of
Sydney

Members

Quentin Bryce AO

Principal
Women's College
University of Sydney

Associate Professor Gay Clarke

Faculty of Law
Queensland University of
Technology

Jennifer David

Dispute Resolution Consultant

Magdeline Fadjar

Senior Member
Immigration Review Tribunal

Wendy Faulkes

Director
NSW Community Justice Centres

Susan Gribben

Executive Director
Relationships Australia (Vic)

Richard Moss

Deputy Secretary
Attorney-General's Department

The Hon Justice Nahum Mushin

Family Court of Australia

Kurt Noble

Community Justice Program
Department of Justice and
Attorney-General (Qld)

Oscar Shub

Partner, Allen Allen & Hemsley
(Sydney)
Consultant, Parker & Parker
(Perth)

Philip Theobald

Barrister, Brisbane

Dr Josephine Tiddy

Dispute Resolution Consultant

Dr Gregory Tillett

Senior Research Fellow in
Conflict Resolution
University of Western Sydney,
(Nepean)

* With the exception of the ex officio member of the Council, Richard Moss, the terms of appointment of all other NADRAC members are 31 October 1995 - 30 October 1997.

CHARTER

1. The National Alternative Dispute Resolution Advisory Council (NADRAC) is an independent advisory council charged with providing the Attorney-General with coordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.

2. The issues on which NADRAC will advise will include the following:

- minimum standards for the provision of alternative dispute resolution services;
- minimum training and qualification requirements for alternative dispute resolution practitioners, including the need, if any, for registration and accreditation of practitioners and dispute resolution organisations;
- appropriate professional disciplinary mechanisms;
- the suitability of alternative dispute resolution processes for particular client groups and for particular types of disputes;
- the quality, effectiveness and accountability of Commonwealth alternative dispute resolution programs;
- ongoing evaluation of the quality, integrity, accountability and accessibility of alternative dispute resolution services and programs;
- programs to enhance community and business awareness of the availability, and benefits, of alternative dispute resolution services;
- the need for data collection and research concerning alternative dispute resolution and the most cost-effective methods of meeting that need; and
- the desirability and implications of the use of alternative dispute resolution processes to manage case flows within courts and tribunals.

3. In considering the question of minimum standards, the Council will examine the following issues:

- the respective responsibilities of the courts and tribunals, government and private and community sector agencies for the provision of high quality alternative dispute resolution services;
- ethical standards for practitioners;

- the role of lawyers and other professional advisers in alternative dispute resolution;
- legal and practical issues arising from the use of alternative dispute resolution services, such as the liability or immunity of practitioners, the enforceability of outcomes and the implications of confidentiality; and
- the accessibility of alternative dispute resolution services.

4. The Council may make recommendations of its own motion to the Attorney-General on any matter relevant to the Council's Charter. In addition, the Attorney-General may, from time to time, refer particular issues to the Council for consideration and report.

5. As the Council's time and resources permit, it may provide comment on matters relevant to its Charter to any Commonwealth, State and Territory or private organisations with an interest in alternative dispute resolution. A copy of any such submission must be provided to the Attorney-General as soon as possible after the submission is dispatched.

6. In performing its functions, the Council will consult broadly with alternative dispute resolution organisations, service providers and practitioners, courts and tribunals, government, the legal profession, educational institutions, business, industry and consumer groups, and community organisations as well as the Family Law Council and the Family Services Council, when appropriate.

7. The Council will develop a forward work plan, including reporting dates, for each year and provide a copy of that work plan to the Attorney-General.

8. The Council will provide the Attorney-General with a report of its operations as soon as possible after 30 June each year.

CONTENTS

Photo of members and Attorney-General at March 1997 Council Meeting in Sydney **Error! Bookmark not defined.**

Council Membership	iv
Charter	vi
Contents	viii
1. Introduction	1
2. STRUCTURE OF COUNCIL	3
Council Membership	3
NADRAC Secretariat	3
3. COUNCIL'S ACTIVITIES	5
Council Meetings	5
Guests at Council Meetings	5
Committees	6
<i>Definitions Committee</i>	6
<i>Diversity Committee</i>	7
<i>Registration and Accreditation Committee</i>	7
Ad hoc committees	8
<i>Ad Hoc Family Law Regulations Committee</i>	8
<i>Ad Hoc Committee on Complaints Against the Australian Federal Police and the National Crimes Authority</i>	10
<i>Ad Hoc Small Business Committee</i>	11
Committee meetings	11
Other ad-hoc work	12
4. Council Procedure	13
Mode of Decision Making	13
Recording of Meetings	13
Council Records	13
Confidentiality	13
Consultation	14
Liaison	15
Participation in the work of other organisations	15
Papers for Council	15
Urgent matters	15
Amendment of Council Decisions	16
Correspondence	16
5. Administrative matters	17
Travel	17
Sitting fees	17
Members Travelling Allowance	17
Financial Resources	17
NADRAC Expenditure for 1995/96	18
APPENDIX A	20
Committee Terms of Reference	20
APPENDIX B	24
Participants at Registration and Accreditation Committee Forums, 1996/97 Financial Year	24

1. INTRODUCTION

1.1 The National Alternative Dispute Resolution Advisory Council (NADRAC) was established in October 1995 to provide independent advice to the Attorney-General on policy issues relating to the fast growing alternative dispute resolution sector. The need for a national body to advise the Commonwealth on issues relating to the regulation and evaluation of alternative dispute resolution (ADR) was identified in the 1994 report of the Access to Justice Advisory Committee (the “Sackville Committee”) entitled ‘Access to Justice-an Action Plan’.

1.2 Alternative dispute resolution services, particularly mediation services, continue to grow at a phenomenal rate and are becoming an increasingly important feature of the Australian justice system. Federal courts and tribunals are increasingly utilising ADR as a means of reducing costs and increasing their capacity to deal with their caseloads. Increasingly also, in the commercial area, the influence of ADR is extending beyond the handling of individual disputes to areas such as contract formation, management policy, industry self-regulation and long term business relationships.

1.3 As stated in its Charter, NADRAC’s role, is to provide the Attorney-General with coordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision. There are already numerous organisations around Australia, both government and non-government, involved in the development of dispute resolution systems and standards for the provision of ADR services. NADRAC has an important role to play in ensuring the quality, consistency and appropriateness of these systems and standards.

1.4 A copy of the Council’s Charter, which was presented to it by the Attorney-General on 18 November 1996, is reproduced in full at page vi of this Report. Previously, the Council had been operating on the basis of draft terms of reference developed during the previous reporting period.

1.5 NADRAC members are appointed for their personal expertise in ADR and related matters, not as the representatives of any particular organisations or interest groups. To encourage the provision of balanced policy advice, NADRAC’s membership reflects a variety of ADR backgrounds. As a result, the Council includes members with expertise in the conduct of family dispute resolution, community mediation, conciliation, commercial mediation, commercial arbitration and litigation, in addition to members with expert knowledge of court and tribunal processes (including court-connected mediation) and academics with a special interest in the ADR field.

1.6 The diversity of its membership has proved invaluable to the Council during this reporting year, its first full financial year of operation. Over the year, the

Council has provided advice to the Attorney-General and commented on matters as wide-ranging as primary dispute resolution under the Family Law Regulations, Benchmarks for Dispute Avoidance developed by the Australian Competition and Consumer Commission in consultation with relevant small business interests and recommendations made by the Australian Law Reform Commission arising from its reference on Complaints Against the Australian Federal Police and the National Crime Authority.

1.7 The Council believes that during 1996/97, it has been able to make a useful contribution to the quality of ADR services in this country.

2. STRUCTURE OF COUNCIL

Council Membership

2.1 The number of members of Council at any one time and the length of their respective terms of appointment is a matter which lies wholly within the Attorney-General's discretion. During the 1996/97 reporting year, the Council had an establishment of 14 members.

2.2 One member of the Council is appointed by virtue of his or her position as a Deputy Secretary within the Attorney-General's Department. Mr Richard Moss has held this ex officio position since his appointment as a Deputy Secretary of the Department on 25 July 1996. Prior to the confirmation of his appointment, Mr Moss was an observer on the Council.

2.3 All the remaining members of Council were appointed by the Attorney-General for a term of two years commencing on 31 October 1995 and expiring on 30 October 1997. Details of the membership of the Council during the reporting period are set out on page iv of the Report.

2.4 NADRAC is not a representative body. The members are appointed in their own right as individuals with recognised expertise in dispute resolution processes. Nevertheless, Council members have links to a broad range of organisations in the dispute resolution field from courts and tribunals to legal professional bodies and community mediation and conciliation organisations.

NADRAC Secretariat

2.5 The NADRAC Secretariat is located in the Courts, Tribunals and Administrative Law Branch of the Civil Law Division, Commonwealth Attorney-General's Department.

2.6 The staffing of the Secretariat and the relevant contact details are:

Director	Serena Beresford-Wylie	(02) 6250 6897
Legal Project Officer	Margaret Harrison-Smith	(02) 6250 5524
Administrative Officer	Cate Wells	(02) 6250 6842
Fax		(02) 6250 5904

Postal Address: **Robert Garran Offices
National Circuit
BARTON ACT 2600
(DX Canberra 5678)**

Location: **Level 3
Lionel Murphy Building
50 Blackall Street
BARTON ACT 2600**

3. COUNCIL'S ACTIVITIES

Council Meetings

3.1 In order to establish links with alternative dispute resolution practitioners and users throughout Australia, NADRAC would like to be able to hold meetings in various Australian cities. Unfortunately, due to budgetary constraints, three of the four Council meetings held during the 1996-97 reporting period were held in Sydney and one in Canberra.

3.2 Having regard also, to budgetary considerations, the Council decided that during the reporting period it would reduce the length of full Council meetings from 2 day meetings to one and a half day meetings. This would enable half a day to be devoted to Committee meetings.

3.3 During 1996/97 Council met as follows:

- 29-30 August 1996 Sydney;
- 5-6 December 1996 Canberra;
- 6-7 March 1997 Sydney; and
- 12-13 June 1997 Sydney.

3.4 NADRAC would like to take this opportunity to express its thanks to the Community Justice Centres (NSW), Allen Allen and Hemsley, Solicitors, and the Women's College, University of Sydney, for providing the Council with venues in Sydney for its August 1996 and March and June 1997 meetings respectively and to the Commonwealth Attorney-General's Department for providing a venue for the December 1996 meeting in Canberra.

3.5 The Council would also like to note its thanks to Council member, Quentin Bryce AO, Principal of the Women's College, for hosting a cocktail party in conjunction with the June 1997 Council meeting in honour of the Chairperson, Professor Hilary Astor's appointment to the newly established Abbott Tout Chair of Litigation and Dispute Resolution at the University of Sydney.

Guests at Council Meetings

3.6 Council members were delighted to meet with the Attorney-General, Daryl Williams AM QC MP at the March 1997 Council meeting. After joining Council and Secretariat members for morning tea, the Attorney-General, who was accompanied to the meeting by his adviser Ms Adele Byrne, took the opportunity to talk with the Council about work currently being undertaken by its Committees.

3.7 During the reporting year, the Council also invited a number of speakers to meet informally with members at meetings of the Council. Speakers at these most informative exchanges were the Hon Sir Laurence Street, AC KCMG (August 1996); Ms Renée Leon, Assistant Secretary, Attorney-General's Department (December 1996); Mr Alan Asher, Deputy Chairman, and Mr Bill Dee, Director, Liaison, Australian Competition and Consumer Commission (March 1997); Mr Alan Limbury of the Law Council of Australia's Dispute Resolution Committee and Mr Colin Neave, Australian Banking Industry Ombudsman (June 1997).

3.8 The Council would like to extend its thanks to all the above for agreeing to meet with the Council.

Committees

3.9 During the 1996/97 financial year, the Council maintained three substantive committees: the Definitions Committee, the Diversity Committee and the Registration and Accreditation Committee.

3.10 Following receipt from the Attorney-General in November 1996 of its official Charter, at its December meeting, the Council approved revised terms of reference for the Diversity Committee and the Registration and Accreditation Committee. Terms of reference were also approved for the Definitions Committee. Copies of the Terms of Reference for each of these Committees are appended (Appendix A).

Definitions Committee

3.11 According to its terms of reference, this committee was charged with the task of developing definitions of key ADR processes which will facilitate clarity and enable ready comparisons to be made, regardless of the range of names currently used for ADR processes.

3.12 In March 1997, NADRAC presented the Attorney-General with a paper entitled *Alternative Dispute Resolution Definitions* (the Definitions Paper).

3.13 The Definitions Paper was developed in response to the increasing range of alternative dispute resolution processes and the large number of definitions used to describe those processes and the lack of consistency in the way terms are applied to various ADR processes. While it is desirable for there to be a diversity of processes available in a still developing field, NADRAC considered it also to be important that the language of ADR should enable both users and providers to communicate clearly and reliably about the procedures on offer.

3.14 Whilst the Definitions Paper was primarily developed to assist Council members to engage in policy discussions about ADR processes, it is hoped that it will also prove to be a useful reference for others involved in the provision and use of ADR services. As reflected in the steady demand for the paper since its publication, the public response to the paper has been most encouraging.

3.15 During the reporting period, there were five meetings of the Definitions Committee. Two of these meetings, on 29 August and 5 December 1996, were held in conjunction with full Council meetings. A teleconference meeting was conducted on 20 August 1996, and two other meetings were held on 25 September 1996 and 14 February 1997.

3.16 Members of the Committee were Wendy Faulkes (Convenor), Professor Hilary Astor, Jennifer David (until 5 December 1996), Dr Gregory Tillet and Margaret Harrison-Smith of the NADRAC Secretariat.

Diversity Committee

3.17 According to its terms of reference (Appendix A), the Diversity Committee is charged with the task of considering:

- . areas of difference between client groups which can affect the fairness and justice of ADR procedures and outcomes;
- . factors within particular dispute resolution processes which can affect the fairness, justice and suitability of those processes, for particular client groups and disputes; and
- . appropriate standards for the provision of ADR services given the diversity of client needs and ADR processes.

3.18 During the reporting period, the Committee continued work on the draft Discussion Paper commenced during the previous financial year. The draft paper focuses upon seven aspects of identity; gender; disability; age; culture; sexuality; geographic location; and socio-economic condition.

3.19 In its scope, the draft paper will traverse areas previously afforded only limited consideration and with respect to which little has been previously written that is directly relevant. It is hoped that the Discussion Paper will promote increased interest, debate and consideration in these areas.

3.20 Members of the Diversity Committee were Oscar Shub (Convenor), Professor, Hilary Astor, Susan Gribben, Kurt Noble, Dr Josephine Tiddy, and Margaret Harrison-Smith of the NADRAC Secretariat.

3.21 The Committee met on 4 occasions during the 1996/97 reporting year. These meetings, which were held on 29 August and 5 December 1996, and 6 March and 12 June 1997, were all held in conjunction with Council meetings.

3.22 The Committee hopes to finalise its Discussion Paper and have it approved by Council for publication during September 1997.

Registration and Accreditation Committee

3.23 The Registration and Accreditation Committee's terms of reference (Appendix A) require it to consider: minimum standards, minimum training and qualification requirements, compliance mechanisms, the need for registration, the need for accreditation and the respective responsibilities of the courts and tribunals, government and / or private and community sector agencies in relation to the above. In view of the size of the task, Council decided that the Committee should confine itself, initially, to the issue of the registration and accreditation of mediators and mediation organisations.

3.24 During the reporting period, the Registration and Accreditation Committee continued with the consultative process commenced during the previous financial year. In that reporting period, 2 forums were held in Brisbane and Melbourne. During the first half of the current reporting period, a further 6 forums were held with practitioners and users of alternative dispute resolution services in Sydney on 29 August 1996, Adelaide on 24 October 1996, Darwin on 25 October 1996, Perth on 28 October 1996, Hobart on 1 November 1996 and Canberra on 5 December 1996. A list of the participants at each of these forums is appended (Appendix B).

3.25 The Committee is currently working on a draft Discussion Paper which it hopes to finalise with the full Council for publication during November 1997. The Committee plans to present its Final Report to the Attorney-General in 1998.

3.26 During the reporting period there were 4 meetings of the Registration and Accreditation Committee. Two of these meetings, on 29 August and 5 December 1996, were held in conjunction with Council meetings. Meetings were also held on 21 February and 11 June 1997. Additionally, on 12 June 1997, prior to the commencement of the June Council meeting, the Committee participated in a most informative discussion with Professor Douglas Frenkel of the University of Pennsylvania Law School and visiting Professor at the University of Sydney Law School.

3.27 Members of the Committee were Philip Theobald (Convenor), Quentin Bryce, Magdeline Fadjar, the Hon. Justice Nahum Mushin and Serena Beresford-Wylie of the NADRAC Secretariat.

Ad hoc committees

3.28 In addition to its substantive committees, two ad hoc committees, the Ad Hoc Family Law Regulations Committee and the Ad Hoc Committee on Complaints Against the Australian Federal Police and the National Crimes Authority, established during the previous reporting period, continued to operate. A further ad hoc committee, the Ad Hoc Small Business Committee was established during the course of the March 1997 Council meeting.

Ad Hoc Family Law Regulations Committee

3.29 This Committee was established during the previous reporting period to comment on draft regulations being developed as a consequence of the passage of the Family Law Reform Act 1996. The life of the Committee was extended in response to a request from the Attorney-General on 8 October 1996 for advice on a number of issues concerning the operation of these newly implemented regulations, embodied in Part 5 of the Family Law Regulations. NADRAC's Report entitled *Primary Dispute Resolution in Family Law: A Report to the Attorney-General on Part 5 of the Family Law Regulations*, was presented to the Attorney-General on 21 March 1997. The Report makes 18 recommendations for changes to both the Family Law Act and Part 5 of the Regulations.

3.30 Some of the key recommendations made in the Report may be summarised as follows:

Compliance

- The *Family Law Act* should be amended to make it clear that only those mediators who require the protections of the Act need to comply with the regulations. The Council regards this as its 'central' recommendation and many of the Council's other recommendations were made in the light of it.
- The need for immunity for mediators in family matters, and the extent of any such immunity, should be considered in the broader context of all of the dispute areas in which mediation is practised. In the interim, the immunity provision should be amended, if necessary, to ensure that consumers of mediation services can pursue actions against mediators for serious misconduct.

Qualifications

- The requirement for tertiary qualifications be retained for the present. However, further consideration be given to whether it is possible for the regulations to recognise professionals with specific experience in the area of family law rather than recognising tertiary qualifications in law or social science.
- The Regulations should be amended to:
 - recognise accountants with experience in family law matters;
 - include legal practitioners admitted to practice as a barrister or solicitor of the High Court or the Supreme Court of a State or Territory;
 - establish a limited authorisation scheme for Aboriginal and Torres Strait Islander mediators who are providing mediation services to Aboriginal and Torres Strait Islander peoples and who cannot reasonably meet the

tertiary qualification requirements (although, in the longer term, special measures should be implemented by the Government to assist Aboriginal and Torres Strait Islander peoples to acquire appropriate tertiary qualifications); and

- establish a limited authorisation scheme for mediators serving non-English speaking background communities who cannot reasonably meet the tertiary qualification requirements because their English language skills are insufficient to enable them to do so.

Improved Access to Tertiary Institutions

- The Government should liaise with tertiary institutions with a view to improving access to tertiary courses for people from socially or economically disadvantaged groups and for people with disabilities. Consideration should also be given to the establishment of long-distance programs in mediation/dispute resolution to assist people in rural and remote areas to acquire relevant tertiary qualifications. Programs should be implemented to increase awareness of available tertiary programs.

Grandparents

- The regulations should be amended to enable the 'true grandparents' of mediation (eg. mediators who had obtained the requisite number of hours of mediation by 11 June 1996 and/or meet such other criteria as are considered appropriate) to apply for authorisation by 31 August 1998, thereby obtaining exemption from the requirement to enrol in a course of tertiary study.

Training

- The Regulations should be amended to provide that the requisite five days training in mediation must include at least three days of specific training in the theory and practice of mediating family disputes.

3.31 During the reporting period, there were 6 meetings of the Committee. Two of these meetings were held in conjunction with full Council meetings on 6 December 1996 and 6 March 1997. A teleconference meeting was conducted on 10 October 1996 and three further meetings were held on 18 October and 14 November 1996, and 30 January 1997.

3.32 Members of the Committee were Professor Hilary Astor (Convenor), Wendy Faulkes, Susan Gribben, Richard Moss, The Hon. Justice Nahum Mushin, Philip Theobald, and Serena Beresford-Wylie of the NADRAC Secretariat.

Ad Hoc Committee on Complaints Against the Australian Federal Police and the National Crimes Authority

3.33 During the reporting year, this Committee provided comments for inclusion in the response from the Attorney-General's Department to draft recommendations and

to the Final Report arising from the Australian Law Reform Commission's reference on Complaints Against the Australian Federal Police and National Crimes Authority.

3.34 It is pleasing to note that in its Report, Report no. 82, *Integrity: but not by Trust Alone: AFP and NCA Complaints and Disciplinary Systems*, the Commission makes specific reference to NADRAC and to its comments on alternative dispute resolution issues relevant to the review.

3.35 During the reporting period, the Ad Hoc Committee met once, on 30 August 1996 in conjunction with a meeting of the full Council. Members of the Ad Hoc Committee were Professor Hilary Astor (Convenor), Quentin Bryce, Wendy Faulkes, Kurt Noble, Dr Gregory Tillett and Margaret Harrison-Smith of the NADRAC Secretariat.

Ad Hoc Small Business Committee

3.36 This Committee was established at the March 1997 Council meeting to consider a request for comment from The Australian Competition and Consumer Commission (ACCC) on its draft Benchmarks for Dispute Avoidance and Dispute Resolution.

3.37 On 18 March 1997, NADRAC attended as an observer at a Second Round Table meeting of participants in the Benchmark development process organised by the ACCC. In May 1997, comments on the draft Benchmarks were conveyed in a letter from the Council's Chairperson to the ACCC.

3.38 During the reporting period, there was one teleconference meeting of this Committee. Members of the Committee were Quentin Bryce, Jennifer David, Wendy Faulkes, Oscar Shub and Margaret Harrison-Smith of the NADRAC Secretariat.

3.39 In recognition of the importance of the contribution by small business to the Australian economy, and the potential for ADR in the solution of small business disputes, at the June 1997 Council meeting, it was decided to formalise the 'permanent' status of this Committee by removing the prefix 'ad hoc' from the title. It was also agreed that as well as its ongoing work on the ACCC Benchmarks, the Committee should embark on a consideration of 'the need for educative programs to advance small business awareness of the availability, benefits and types of alternative dispute resolution'. The first stage of this work is to develop parameters for the project and to consider who should be involved in the educative process. A paper on this issue is to be presented by the Committee to the October 1997 meeting of Council.

Committee meetings

3.40 There were 22 Committee meetings during 1996/97. Where possible these Committee meetings were held in conjunction with Council meetings and in venues provided free of charge by Council members or by other Commonwealth and portfolio agencies to minimise the costs incurred by the Council. Ten Committee meetings were held in conjunction with Council meetings. This has proven to be an

efficient and cost-effective way of operating and will be continued into the next reporting period.

3.41 Where possible, shorter meetings not held in conjunction with Council meetings were conducted by teleconference. Three such meetings were held during the reporting period.

Other ad-hoc work

3.42 On 25 October 1996, the Chairperson addressed the Standing Committee of Attorneys-General (SCAG) on the growth of alternative dispute resolution in Australia and the membership and functions of NADRAC. The Council also made a detailed written submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Aspects of Family Services concerning the respective roles of community organisations and government agencies in the provision of a wide range of family dispute resolution services including relationship counselling and mediation. On 13 November 1996, the Chairperson also appeared before the Committee at hearings in Sydney.

3.43 As a result of the Chairperson's meeting with SCAG, lines of communication have been established between the NADRAC Secretariat and officers responsible for issues relating to ADR in State and Territory Attorney-General's and Justice Departments.

3.44 Other NADRAC work during the reporting period included the provision of comments: on the first Report of the Prime Ministerial Youth Homeless Task Force; Benchmarks for Industry Based Customer Dispute Resolution Schemes and draft Principles and Guidelines for Developing a Service Charter developed by the Federal Bureau of Consumer Affairs; and comments on interim arrangements under consideration by Legal Aid and Family Services in the Attorney-General's Department for the authorisation of family and child counsellors under the *Family Law Act 1975*. NADRAC also provided the Attorney-General with advice with respect to a proposed amendment to the *Federal Court of Australia Act* to provide for nonconsensual mediation in the Federal Court.

3.45 At the June 1997 Council meeting, some concern was expressed at the lack of consolidated information about Australian ADR services currently available in neighbouring Asian and Pacific countries. In light of this, the Council decided that it should consider what role, if any, NADRAC might have in the development of a booklet for the Asian and Pacific market containing information about Australian ADR expertise.

3.46 A paper is to be prepared on this subject by the NADRAC Secretariat for the October 1997 Council meeting.

4. COUNCIL PROCEDURE

4.1 The Council has determined that it will operate in accordance with the following procedures.

Mode of Decision Making

4.2 Council proceeds by way of consensus, and votes only where necessary. The expression of diversities of opinion is valued by Council.

Recording of Meetings

4.3 All Council meetings and some Committee meetings are recorded electronically.

Council Records

4.4 A record is kept of each Council meeting and each Committee meeting.

4.5 Minutes of meetings are prepared by the Secretariat and circulated to members within ten working days of each meeting. The minutes contain the decisions of Council; a brief summary of the major issues; and, an action column, specifying the nature of tasks, who is to take action and the date for the completion of the task. Decisions for immediate action are recorded at Council meetings and circulated at the meeting.

4.6 The Council plans to maintain an up to date register of formal recommendations made to the Attorney-General and the outcome of those recommendations.

Confidentiality

4.7 The Council felt that it was appropriate to develop some procedures relating to confidentiality as it expects that, from time to time, the Council will have access to confidential information. In addition, the members of Council felt that, as they were appointed to Council as individuals not as representatives of any organisations, they should be free to contribute to Council decisions as they felt appropriate without fear that any personal views they expressed would be made public without their knowledge and approval. Accordingly, the Council decided upon the following procedures:

- No information communicated to people outside the Council will attribute any particular view to any particular Council member without the agreement of the member concerned;
- The Council will decide if any particular matter is sensitive and Council wishes confidentiality to attach to that matter;
- Subject to the above, each member of Council is required to use his or her discretion in discussing the issues considered by Council;
- Except for material in the public domain Council papers will not be circulated outside Council without a prior decision of Council; and
- Before Council publishes any of its decisions it will consult with the Office of the Attorney-General.

4.8 However, Council specifically recognised the need to communicate as openly and broadly as possible about its work. Accordingly, the Council has decided that the Secretariat and members may make the Council Meeting Agenda available to any individuals or organisations as appropriate.

Consultation

4.9 In performing its functions the Council is required to consult broadly with alternative dispute resolution organisations, service providers and practitioners, courts and tribunals, government, the legal profession, educational institutions, business, industry and consumer groups and community organisations as well as the Family Law Council and Family Services Council, when appropriate.

4.10 During 1996/97, the Council sought to fulfil this requirement by publishing the first edition of its newsletter, 'NADRAC Notes', in March 1997. The newsletter was distributed to all those on the NADRAC mailing list which includes a broad range of individuals and organisations with interests in ADR. It is planned to produce a second edition of the newsletter early in the next financial year. Registration and Accreditation Committee forums in Sydney, Adelaide, Darwin, Perth, Hobart and Canberra, to consult local stake holders in each of those jurisdictions on issues under consideration by the Committee also contributed significantly to the fulfilment of this requirement. Discussion papers presently being worked on by this Committee and the Diversity Committee will assist further in this regard.

4.11 Additionally, NADRAC has secured a sub-page on the Attorney-Generals Department's web-site home page. NADRAC's sub-page address will be:

<http://law.gov.au/aghome/advisory/nadrac/nadrac.htm>

4.12 All NADRAC publications will be able to be accommodated on the web-site. To date requests have been made for inclusion on the site of the Council's ADR Definitions paper, its Report to the Attorney-General on Part 5 of the Family Law Regulations, and, the first edition of 'NADRAC Notes'. When complete, copies of

the Discussion Papers being prepared by the Councils' Diversity and Registration and Accreditation Committees, and the second edition of 'NADRAC Notes' will also be accommodated on the web-site.

Liaison

4.13 The Council has been exchanging agendas with the Family Law Council and the Family Services Council since agreed at the first meeting of NADRAC in November 1995. In response to a suggestion for the ADR Committee of the Law Council of Australia, NADRAC decided at its meeting in December 1996 that an ongoing exchange of information would be also useful to the work of both bodies, and that this would be achieved through the regular exchange of meeting agendas. The Council agreed that similar exchanges of information could usefully be undertaken with other peak national bodies.

Participation in the work of other organisations

4.14 Having regard to NADRAC's primary role of providing independent advice to the Attorney-General on alternative dispute resolution, it would be inappropriate for the Council to align itself with the work of other non-Government organisations considering issues of alternative dispute resolution. However, the Council maintains an interest in such work and is willing, as appropriate, to be consulted and to make suggestions and comments on the issues that are under consideration.

Papers for Council

4.15 Papers for Council meetings are prepared by the Secretariat and sent to members seven working days prior to meetings.

Urgent matters

4.16 NADRAC has adopted the following procedures for responding to urgent matters:

1. The Chairperson is immediately advised of any matter which requires urgent consideration.
2. Upon notification of the matter, the Chairperson will either:
 - (i) ask the Secretariat to prepare a draft response for the Chairperson's signature; or
 - (ii) establish an ad hoc committee to consider the request and report back on an appropriate response.
3. Prior to dispatch, if time permits, the Chairperson will clear the draft response with all Council members.

4. If time does not permit this, the Chairperson will endeavour to clear the draft response with those members with a particular expertise or interest in the subject area of the request.
5. A copy of the final response will then be included in the agenda for consideration by the Council at its next meeting.

Amendment of Council Decisions

4.17 Council recognises that from time to time it may be necessary to amend Council decisions to correct inadvertent errors and take account of changing circumstances. Accordingly, the Council has adopted the following guidelines relating to the amendment of Council decisions.

4.18 The Chairperson, or where the Chairperson is not available, the Director of the Secretariat may:

- (i) depart from the decisions of Council where necessary to accord with changed circumstances provided that Council is subsequently informed;
- (ii) edit text drafted at Council meetings as needed to progress effectively the business of Council, provided that the substantive meaning is unchanged.

Correspondence

4.19 Council correspondence is prepared by the Secretariat and signed by the Chairperson, relevant Committee Convenor or, as appropriate, by the Secretariat.

5. ADMINISTRATIVE MATTERS

Travel

5.1 Members' air travel is arranged by the Council Secretariat and paid out of the Council's operating funds. In general, members fly economy class when travelling involves a flight time of less than 3 hours. Where flight times exceed 3 hours, Council members are entitled to fly business class. Different conditions may apply in relation to any members of the judiciary who are members of Council.

5.2 As the Attorney-General's Department has a contract with Qantas, members are required to travel with Qantas wherever possible. Council members are not entitled to personal use of any frequent flyer points earned when flying on Council business.

SITTING FEES

5.3 Although not holders of public office, the members of NADRAC are paid sitting fees in line with Category 2 Sitting Fees determined by the Remuneration Tribunal for Non-specified Part-Time Holders of Public Office. Members are entitled to be paid the daily sitting fee for attendance at any Council or committee meeting which exceeds 3 hours. Lesser amounts are payable in respect of meetings of less than 3 hours.

5.4 The daily fees as at 30 June 1997 were:

<i>Chairperson:</i>	\$285
<i>Member:</i>	\$235

MEMBERS TRAVELLING ALLOWANCE

5.5 Members are paid travelling allowances in accordance with the rates specified by the Remuneration Tribunal for Part-Time Holders of Public Office.

FINANCIAL RESOURCES

5.6 NADRAC's allocation for the 1996/97 financial year was \$234,409. This figure comprised \$154,841 for secretariat salaries and \$79,568 for sitting fees and other administrative expenditures. In addition, the Council received a further \$15,000 during the year to assist it to establish a Committee to respond to a reference from the Attorney-General in relation to the Family Law Regulations. Accordingly, the total funding available to the Council this financial year was \$249,409.

NADRAC EXPENDITURE FOR 1996/97

5.7 NADRAC is funded by the Attorney-General's Department. The Council's expenditure is contained within Program 1 (Sub-Program 1.1 - Legal Practice) of the Department's audited financial statements published in the Department's Annual Report.

5.8 NADRAC's total expenditure for the financial year was \$226,459. The largest item of expenditure was clearly the cost of Secretariat staff salaries. If this item is disregarded, however, the Council's expenditure for the financial year was \$71,618.

5.9 A breakdown of the Council's expenditure for the 1996/97 year is set out in the following table:

Table 1: NADRAC's Total Expenditure 1996/97

ITEM	EXPENDITURE
Secretariat staff salaries	\$154,841
Sitting fees	\$19,745
Travel and accommodation	\$42,101
Incidental meeting costs	\$494
Administrative expenses	\$1,726
Printing and publishing	\$7,552
TOTAL:	\$226,459

Explanatory Note

- Any minor discrepancies in these figures is a result of rounding to the nearest dollar.

5.10 The Council had \$22,950 remaining in operating funds at the end of the financial year partially reflecting a need to postpone the publication of a discussion paper and the second edition of NADRAC's newsletter. These remaining funds were carried forward to the 1997/98 financial year to enable the Council to pursue the postponed projects and assist it to cover an anticipated fall in the Council's allocation for the 1997/98 financial year.

5.11 *Economy measures* There is little room for the Council to further reduce its expenditure. Council members are presently only paid sitting fees for actual attendance at Council and committee meetings. In addition, the majority of Council members are only entitled to economy air fares unless their flights exceed 3 hours in length. Further to the economy measures already adopted by the Council in the 1995/96 financial year, Council meetings were reduced from 2 days to 1.5 days to permit committee meetings to be convened on the morning of the first day thereby reducing accommodation costs and sitting fees. Only one night's accommodation was provided for Council meetings (except in the case of the Perth member or on the rare occasion when it was necessary to convene a committee meeting the day before

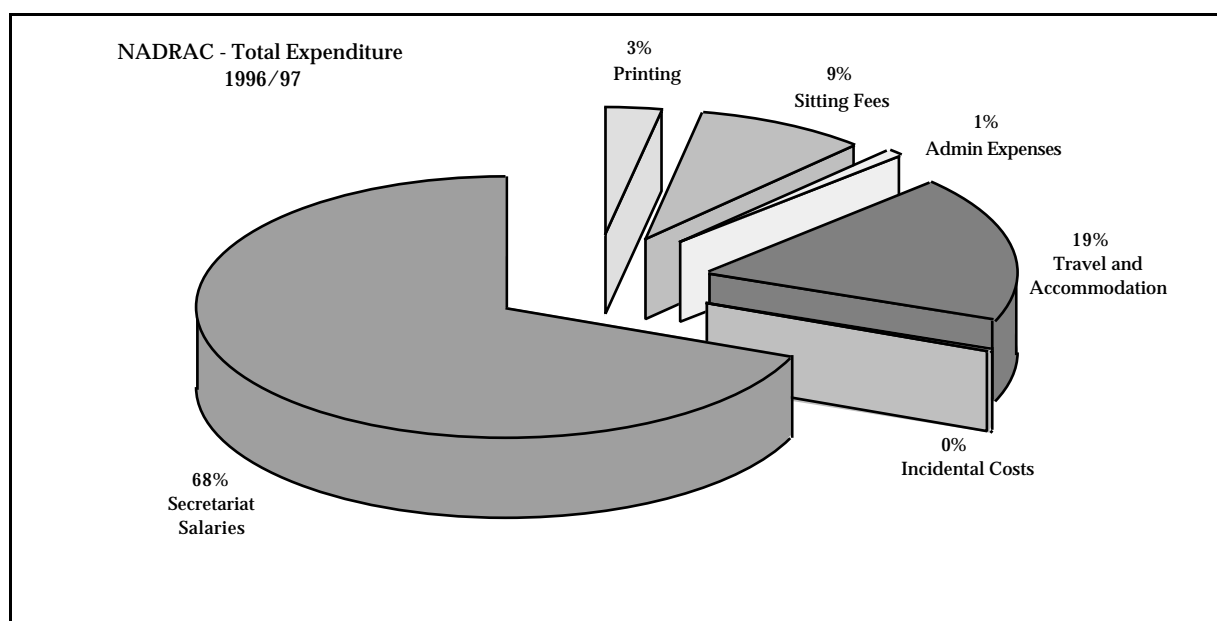
a Council meeting). Wherever possible, meeting rooms were sought free of charge from Council members or from other Commonwealth and portfolio bodies.

5.12 Convening committee meetings on the first half day of NADRAC meetings enabled the Council to limit the number of separate committee meetings during the year to 10 (one of which was held on the day immediately preceding a NADRAC meeting) thereby reducing associated travel and sitting fee costs. In addition 3 committee meetings were conducted by means of teleconference despite the Council's view that teleconferences are not an efficient mechanism for in depth discussion of policy issues. The Council did not attempt to use video conferences as previous estimates obtained by the Council indicated that they would be more expensive than face to face meetings for almost all committee meetings.

5.13 In anticipation of a further reduction in the amount of money available to the Council next financial year the Council decided that it would need to reduce the number of Council meetings from 4 meetings per year to 3 meetings per year. The Council was disappointed about the necessity for this decision as it felt that this move may significantly affect the Council's productivity.

5.14 The most significant expenses for the Council in 1996/97 were Secretariat staff salaries (68%); travel and accommodation (19%); and sitting fees (9%).

Chart 1: NADRAC's Expenditure 1996-97



Explanatory Notes

- *Sitting Fees* - 11 Members of the Council are entitled to Sitting Fees. There were 4 Council meetings and 22 Committee meetings during 1996-97.
- *Travel and Accommodation* - Includes the cost of airfares, travel allowance, cab charges and car parking.
- *Incidental Costs* - Includes catering costs.
- *Administrative Expenses* - Includes the cost of book subscriptions, communication charges, attendance at conferences/seminars, purchasing books, postage and the transcription of tapes.
- *Printing* - Covers the cost for printing of reports, discussion papers and newsletters.

APPENDIX A

COMMITTEE TERMS OF REFERENCE

DEFINITIONS COMMITTEE

TERMS OF REFERENCE

1. The National Alternative Dispute Resolution Advisory Council (NADRAC) is an independent advisory body charged with providing the Attorney-General with coordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.
2. To enable the Council to provide effective, consistent advice to the Attorney-General and to ensure clarity when considering ADR processes, it is important that Council members have a common understanding of the substance of dispute resolution processes under consideration.
3. NADRAC has, accordingly, established a Definitions Committee to consider and develop definitions for a range of key ADR processes. Specifically, the Committee will:
 - develop a set of ‘benchmark’ definitions of key ADR processes which will facilitate clarity and enable ready comparisons to be made, regardless of the range of names which are presently used for ADR processes; and
 - in addition to those ‘benchmark’ definitions, develop a more detailed set of definitions representing such variations on the key processes as are to be found in practice.

DIVERSITY COMMITTEE

TERMS OF REFERENCE

1. The National Alternative Dispute Resolution Advisory Council (NADRAC) is an independent advisory body charged with providing the Attorney-General with coordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.
2. The issues on which NADRAC is required to advise include:
 - minimum standards for the provision of alternative dispute resolution (ADR) services; and
 - the suitability of ADR processes for particular client groups and for particular types of disputes.
3. NADRAC has established a Diversity Committee to consider these issues. Specifically, the Committee will consider the following:
 - areas of difference between client groups which can affect the fairness and justice of ADR procedures and outcomes;
 - factors within particular dispute resolution processes which can affect the fairness, justice and suitability of those processes, for particular client groups and disputes; and
 - appropriate standards for the provision of ADR services in the context of the diversity of client needs and ADR processes.
4. In performing its functions, the Diversity Committee will consult broadly with ADR organisations, service providers and practitioners, courts and tribunals, government, the legal profession, educational institutions, business, industry and consumer groups and community organisations as well as the Family Law Council and the Family Services Council if appropriate.

REGISTRATION AND ACCREDITATION COMMITTEE

TERMS OF REFERENCE

1. The National Alternative Dispute Resolution Advisory Council (NADRAC) is an independent advisory body charged with providing the Attorney-General with co-ordinated and consistent policy advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.
2. The issues on which NADRAC is required to advise include:
 - minimum standards;
 - minimum training and qualification requirements, including the need, if any, for registration and accreditation of practitioners and dispute resolution organisations; and
 - professional disciplinary mechanisms.
3. NADRAC has established a Registration and Accreditation Committee to consider these issues in relation to mediators and mediation organisations. Specifically, the Committee will consider the following:
 - minimum standards;
 - minimum training and qualification requirements;
 - compliance mechanisms;
 - the need for registration;
 - the need for accreditation; and
 - the respective responsibilities of the courts and tribunals, government and/or private and community sector agencies in relation to the above.
4. In performing its functions, the Registration and Accreditation Committee will consult broadly with alternative dispute resolution organisations, service providers and practitioners, courts and tribunals, government, the legal profession, educational

institutions, business, industry and consumer groups, and community organisations, as well as the Family Law Council and the Family Services Council, if appropriate.

APPENDIX B

PARTICIPANTS AT REGISTRATION AND ACCREDITATION COMMITTEE FORUMS

1996/97 FINANCIAL YEAR

SYDNEY FORUM PARTICIPANTS

Committee

Philip Theobald (Convenor)
Associate Professor Gay Clarke
Magdeline Fadjar
Serena Beresford-Wylie (Secretariat)

Others

Mike Ahrens	Member, Dispute Resolution Committee, NSW Law Society
Frank Astill	Lecturer, Faculty of Law, Macquarie University
Matthew Blackmore	Director of Policy, Private Health Insurance Complaints Commission
Ken Carlsund	Registrar, Retail Tenancy Disputes Unit
Elizabeth Chisholm	Private Mediator
Stella Cornelius	Director, Conflict Resolution Network
David Cox	ADR Coordinator, Legal Aid Commission of NSW
Paul Crowley	Manager, Mediation Services, Unifam
Mark Dempsey	Barrister, National Dispute Centre
Sue Duncombe	Executive Director, LEADR
Justice Foster	Judge, Federal Court
Albertje Gurley	Registrar, NSW Health Conciliation Registry
Alan Limbury	Chairman, Law Council Dispute Resolution Committee
Jo Kalowski	Part-time Member, Administrative Appeals Tribunal
John Mathieson	District Registrar, Federal Court
Alan Melrose	Mediator, Australian Government Solicitor's Office
Kieran Pehm	Assistant Secretary (Complaints), Human Rights & Equal Opportunity Commission
Justice John Purdy	Judge, Family Court of Australia

David Rollinson	President, Australian Dispute Resolution Association (ADRA)
Louise Rosemann	Coordinator, Relationships Australia (NSW)
Tania Sourdin	Legal Specialist, Supreme Court of NSW/ALRC
Peter Smith	Clerk of the Court, Local Courts Administration
The Hon Sir Laurence Street AC KCMG	Private Mediator
Mary Walker	Chair, ADR and Arbitration Committee, NSW Bar Association
Barry Walsh	Registrar, Industrial Relations Court
John Weingarth	Director, Legal Services, Mediate Today
Annie West	Coordinator, Community Justice Centre

ADELAIDE FORUM PARTICIPANTS

Committee

Philip Theobald (Convenor)

Others

David Jenkin	Law Society ADR Committee
Margaret Ross	Equity Chambers
Garry Edwards	School of Law and Legal Practice, University of South Australia
John Steele	Community Mediation Services of SA
Franca Petrone	School of Commerce, Flinders University
Ross McClure	Australian Government Solicitor's Office
Katherine O'Neill	Legal Services Commission of SA
Anthony McDonagh	Family Court of Australia
John Kiosoglous	Administrative Appeal Tribunal
Anne Prior	Relationships Australia (SA)
Dale Bagshaw	School of Social Work and Social Policy, University of South Australia
Linda Matthews	Equal Opportunity Commission (SA)
Kathy Mack	School of Law, Flinders University

DARWIN FORUM PARTICIPANTS

Committee

Philip Theobald (Convenor)

Others

Ian Gray	Magistrates' Court
Greg Roche	NT Anti-Discrimination Commission
Lyn Douglas	NT Law Reform Committee, NT Attorney-General's Department
Liz Leahy	Mediation Association
Ross McSwan	Resolve
Peter Liddle	Federal Court of Australia
Jim Campbell	Law Society (NT)

PERTH FORUM PARTICIPANTS

Committee

Philip Theobald (Convenor)
Magdeline Fadjar

Others

Carole Hopkins	Family Court of WA
Laurie James	Law Society ADR Committee
Shane Henderson	Henderson Power & Associates
Mary Power	Henderson Power & Associates
Michael Mills	LEADR (WA)
Kathy Burgess	Gosnells District Information Centre
Nicoletta Ciffolilli	Mediation Services of WA
Elizabeth Stanley	Federal Court of Australia
Pauline Phillips	Relationships Australia (WA)
Helen Andrews	Equal Opportunity Commission (WA)
Klim Gollan	National Native Title Tribunal
Mary White	Equal Opportunity Commission (WA)
Margot Noon	C/o Robert Parkinson & Associates
Trevor O'Sullivan	C/o Clayton Utz
Fran Brennan	FM Brennan & Associates
Tony Winter	Independent Mediation Service
Robin Thorn	Aboriginal Alternative Dispute Resolution Service (WA), Ministry of Justice
Lorrienne Ethell	Citizens Advice Bureau
Pamela Toyne	Gosnells District Information Centre
Peter Curry	Peter Curry & Associates

HOBART FORUM PARTICIPANTS

For Committee

Susan Gribben

Others

Byron Cross

Kim Paterson

Karen Gunning

Merrin MacKay

Ian Newman

Geoff Storr

Antonia Dunne

Marie Kennedy

Santi Mariso

Robert Johnson

Janet Cooper

Anne Brown

Senator Eric Abetz

Judith Paxton

Legal Aid

Zeeman Kable & Page

Community Mediation Service (TAS)

Supreme Court of Tasmania

Community Mediation Service (TAS)

Department of Justice

Relationships Australia (TAS)

Working with Conflict

Human Rights and Equal Opportunity Commission

Hobart Community Legal Service

Federal Court of Australia

Law Society - Mediation and Arbitration Committee

Federal Parliament

Legal Ombudsman

CANBERRA FORUM PARTICIPANTS

Committee

Philip Theobald (Convenor)
Associate Professor Gay Clarke
Magdeline Fadjar
The Hon Justice Nahum Mushin
Serena Beresford-Wylie (Secretariat)

Others

David Syme	The Resolution Centre
Frank Murphy	ACT Attorney-General's Department
Dave DeVenny	Australian Federal Police
Tim Johnstone	Barrister
Kathryn Heuer	Canberra Mediation Service
Chris Mountifield	Institute of Arbitrators Australia
Mary Hinchey	The Resolution Centre
Boris Budak	Public Service & Merit Protection Commission
Karrina Sutinen	EASACT
Kieran O'Callaghan	Kieran O'Callaghan and Associates
Tim Chadwick	LEADR
Rob Brennan	Facilitation and Training Services
Uwe Boettcher	ADR Committee, The Law Society of the ACT
Leonie Farrant	Australian Government Solicitor's Office (ACT)