

# NADRAC Notes

Quarterly Newsletter

## Contribution to 'NADRAC Notes' by Federal Attorney-General and Minister for Justice, Daryl Williams, AM QC MP

It gives me great pleasure to contribute to the National Alternative Dispute Resolution Advisory Council's (NADRAC's) inaugural newsletter, 'NADRAC Notes'.

The use of Alternative Dispute Resolution (ADR), particularly mediation services, has grown rapidly in recent times. ADR is now a significant feature of the Australian justice system, and federal courts and tribunals are increasingly referring matters to ADR as a means of avoiding the costs and the acrimony often associated with more traditional means of dispute resolution. I wholeheartedly support this.



In this competitive environment, I believe it is important to ensure that ADR services are efficient, of consistent quality, and provide economic and efficient mechanisms for resolving disputes.

Consistent with this, NADRAC is charged with the important task of providing the Commonwealth Government with independent, coordinated and consistent policy advice on the development of high quality and economic ADR services .

The Council has already provided the Government with advice on a number of important ADR issues and is currently considering a range of other significant issues on which it will report to me later this year.

The Council has a broad membership. It comprises members with judicial and quasi-judicial expertise, those with commercial arbitration and mediation experience, as well as community mediators. NADRAC is therefore uniquely placed to consolidate and coordinate the development of ADR standards within the federal arena.

I believe that 'NADRAC Notes' will be a useful vehicle for airing issues relating to dispute resolution in Australia. I look forward to continuing to work with the Council.

Daryl Williams

**The National Dispute Resolution Advisory Council (NADRAC) was established in 1995 to advise the Federal Attorney-General on high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.**



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L to R back: Susan Gribben, Jennifer David, Colin Neave (retired), Josephine Tiddy, Philip Theobald, Oscar Shub, Kurt Noble. L to R front: Wendy Faulkes, Dr Gregory Tillett, Professor Hilary Astor (Chairperson), Associate Professor Gay Clarke, Magdeline Fadjar and The Hon Justice Mushin. Absent: Quentin Bryce.

## NADRAC Members

The inaugural members of NADRAC have been appointed for two years ending on 30 October 1997. Appointed to the Council in their individual rather than their representative capacities, Council members have a very broad range of experience in the dispute resolution area.

Members of the Council for 1995 - 1997 are:

### Professor Hilary Astor (NSW) Chairperson

Professor of Law, University of Sydney; co-authored one of the primary texts on dispute resolution in Australia and has published a number of articles on alternative dispute resolution issues; Professor Astor has a particular interest in the impact of alternative dispute resolution processes on women.

### Quentin Bryce (QLD)

Human Rights lawyer; newly appointed Principal of Women's College, Sydney University; Chair and Chief Executive Officer, National Childcare Accreditation Council 1993 - 1996; Federal Sex Discrimination Commissioner 1988 - 1993. Extensive experience in complaint handling; long background in advocacy for children and equality of opportunity for women in government and non-government organisations at international and national level and has published broadly in these fields.

### Associate Professor Gay Clarke (QLD)

Associate Professor, Director of Teaching and Learning, Faculty of Law Queensland University of Technology; has extensive teaching experience in mediation and negotiation skills and has published numerous articles on alternative dispute resolution; mediator with the Queensland Building Tribunal; Director of the Australian Commercial Dispute Centre (QLD); a member of the ADR Committee of the Queensland Law Society and a member of the Dispute Resolution Council (QLD).

### Jennifer David (NSW)

Formerly Freehill Hollingdale and Page Professor of Dispute Resolution, Centre for Dispute Resolution, University of Technology, Sydney; has extensive teaching experience in dispute resolution; former Chief Executive Officer of LEADR and Manager, Australian Commercial Disputes Centre; has carried out numerous consultancies related to dispute resolution and dispute system design, is a practising mediator and has published broadly in the field.

### Magdeline Fadjar (WA)

Senior Member of the Immigration Review Tribunal; formerly an advocate and solicitor of the Supreme Court of Singapore; admitted as a Barrister, Solicitor and Proctor of the Supreme Court of Western Australia. Member of the Equal Opportunity Tribunal of Western Australia and the Western Australian Chief Justice's Task Force on Gender Bias in the Justice System; former member of the management committee of the Women's Refuge Multicultural Services of Western Australia.

### Wendy Faulkes (NSW)

Director, NSW Community Justice Centres, has been involved in the management of NSW Community Justice Centres since 1980; awarded a Churchill Fellowship

in 1982 to study mediation and community based dispute resolution in the USA and UK; has experience in the areas of community and family mediation, Aboriginal family mediation and insurance industry complaints.

### Susan Gribben (VIC)

Executive Director Relationships Australia (Victoria); former Director of Family Mediation Service (Relationships Australia); has extensive experience in relationship counselling and family mediation service provision and training.

### The Hon Justice Nahum Mushin (VIC)

Judge of the Family Court, Melbourne; Judge with special responsibility for mediation and has previously been a consultant to the ALRC on its matrimonial property reference.

### Richard Moss (ACT)

Deputy Secretary, Attorney-General's Department. Mr Moss has been appointed by the Attorney-General as an ex officio member of the Council.

### Kurt Noble (QLD)

Aboriginal and Torres Strait Islander Mediation Project Officer, Alternative Dispute Resolution Division, Qld Department of Justice and Attorney-General; a practicing mediator and trainer specialising in dispute resolution services for Aboriginal and Torres Strait Islander communities.

### Oscar Shub (WA)

Partner Allen Allen & Hemsley; Consultant Parker & Parker; accredited mediator on LEADR's Advanced Panel of Mediators; Chairperson National Board of LEADR; expertise in the field of large scale technical and insurance disputes.

### Philip Theobald (QLD)

Barrister from Queensland and Chair of the Australian Institute of Family Law Arbitrators and Mediators; practicing mediator and arbitrator.

### Josephine Tiddy (SA)

Australia's longest serving Commissioner for Equal Opportunity, in South Australia, 1980 - 1996; established the complaints process to handle discrimination disputes under State and Federal Equal Opportunity and Human Rights laws; has undertaken a large range of consultancies relating to dispute resolution and presented numerous papers on the impact of legislatively based resolution processes on women, people of different racial and cultural backgrounds and people with disabilities; practising mediator and consultant.

### Dr Gregory Tillett (NSW)

Senior Research Fellow in Conflict Resolution, University of Western Sydney, Nepean; formerly Director, Centre for Conflict Resolution, Macquarie University and Conciliation Officer, NSW Anti-Discrimination Board; published broadly in the areas of conflict resolution and discrimination; expertise in employment, health, welfare and community disputes.

# INTRODUCING NADRAC

## Note from the Chairperson

May I extend a very warm welcome to readers of this first edition of 'NADRAC Notes'.

This year will be a very exciting year for NADRAC as our three substantive committees – the Definitions Committee, the Diversity Committee and the Registration and Accreditation Committee – are all expected to produce substantial written material. There is every indication too, that the advice of the Council will continue to be sought by the Federal Government on a range of other important issues.

Through our newsletter we hope to keep you fully informed of our activities, and also, to encourage you to contribute any thoughts or comments that might be useful to the Council in its work.

Professor Hilary Astor

As this is the first edition of 'NADRAC Notes', it is appropriate to devote a little space to some background information about NADRAC, its members and its work.

NADRAC was established in October 1995. It has its origins in the 1994 report of the Sackville Committee "Access to Justice – an Action Plan" which clearly recognised the need for a national advisory body on issues relating to the regulation and evaluation of ADR processes and procedures .

The Council provides independent advice to the Federal Attorney-General. It is a non-statutory body appointed by the Minister and is provided with research and administrative support by a small Secretariat located in the Commonwealth Attorney-General's Department in Canberra.

NADRAC's role is perhaps best reflected in its Charter which reads as follows:

## 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.

A full account of the Council's activities for the 1995/96 financial year is set out in the Council's *Annual Report* which has been circulated with this newsletter. The Council made substantial progress with its work program during this inaugural period. As a result, a range of significant written material is likely to be produced by the Council during the course of this year.

Budget permitting, the Council holds four two day Council meetings each year. In so far as possible, these meetings have been rotated between different capital cities to allow members to liaise with ADR practitioners and organisations in different jurisdictions. To date, meetings have been held in Canberra, Brisbane, Melbourne and Sydney. The next meeting is to be held in Sydney on 6 and 7 March 1997.

NADRAC has three substantive committees which are looking at:

- the defining characteristics of the various forms of ADR;
- registration and accreditation of practitioners and service providers; and
- the suitability of ADR processes for particular client groups and particular types of disputes.

Additionally, the Council has established several ad hoc committees to consider matters within the scope of its Charter but which are unrelated to the work of the three permanent committees. Other ad hoc projects are dealt with by the Council as a whole.

Details of the work currently being undertaken by each of the standing Committees are as follows:

#### Definitions Committee

This Committee is working on a paper setting out 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. A more detailed set of definitions, representing such variations on the key processes as are to be found in practice, is also to be developed.

While the primary intention is to clarify the meaning of particular terms used by NADRAC and to ensure that there is a consistent usage of these terms by Council members, the Council also believes that its work will be useful, more generally, to ADR service providers and consumers.

It is proposed to publish the paper for circulation to interested ADR service providers and consumers in the early part of this year.

#### The Registration and Accreditation Committee

This Committee is examining the need, if any, for registration and accreditation of mediators and mediation organisations, minimum standards and minimum training and qualification requirements, compliance mechanisms and the respective responsibilities of the courts and tribunals, government and/or private and community sector agencies for such matters.

Over the past 10 months, the Committee has consulted broadly with ADR organisations and service providers and practitioners, courts and tribunals, consumer groups and community organisations in all Australian States and Territories. In addition to enabling Committee members to test reactions and to gather information from practising mediators and mediation experts at the local level, the sessions have proved most successful in informing local stakeholders about NADRAC and providing a venue for local ADR communities to meet and exchange information.

The Committee will utilise the information obtained at these sessions to prepare a Discussion Paper for dissemination in mid 1997. The responses to the Discussion Paper will then be taken into account in preparing a draft report for consideration by the Council and, if approved, subsequent presentation to the Attorney-General in late 1997.

#### The Diversity Committee

This Committee is currently working on a Discussion Paper canvassing areas of difference between client groups which can affect the fairness of ADR procedures and outcome, factors within particular dispute resolution processes which can affect the fairness 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.

The interaction of gender, culture, sexuality, disability, age, geography and socio-economic factors with ADR is being considered in this context.

The Committee hopes to complete its work on the Discussion Paper in early 1997. It will then circulate the paper to interested parties for comment before reporting to the Attorney-General in late 1997.

#### Ad Hoc Work and Committees

Since its inception, NADRAC has been

involved in a very wide range of ad hoc work.

The Council has recently received requests from the Attorney-General to comment on the proposed restructure of the Commonwealth Family Services Program outlined in his speech of 15 October 1996 to the National Press Club, and upon mandatory referral to mediation in the Federal Court, focussing particularly on when referral is appropriate and whether the mediation should be in or out of court.

The Council is also liaising with the Australian Law Reform Commission in its *Review of the Adversarial System of Litigation*, and the Attorney-General's Department has recently sought NADRAC's input into proposed interim arrangements for the authorisation of family and child counsellors under the Family Law Act.

Earlier this year, at very short notice, NADRAC provided comments to the Attorney-General's Department on the proposed Family Law Mediation Regulations. Most recently, at the request of the Attorney-General, the Council is preparing a report to him on the operation of the Regulations since their commencement on 11 June 1996. In view of the complexity of the issues under consideration, the Council's report to the Attorney-General, originally scheduled to be made in early December 1996, will now be made in early March 1997.

During the year, the Council also responded to a request from the Attorney-General's Department for comment on excerpts of the Australian Law Reform Commission's Issues Paper 16 and the draft Report arising from its reference on Complaints against the AFP and NCA. 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 and the Council's Chairperson appeared before the Inquiry hearings in Sydney.

Finally, the Council commented on the Prime Ministerial Youth Homeless Task Force's first report: Framework for Youth Homelessness Pilot Programme, and with the Attorney-General's approval, made a submission to the NSW and Queensland Law Reform Commissions in relation to their reference on uniform succession laws. Comments were also provided to the Federal Bureau of Consumer Affairs on Benchmarks for Industry-Based Customer Dispute Resolution Schemes, and upon draft Principles and Guidelines for Developing a Service Charter.

#### Bringing Matters to the Attention of the Council

Should you wish to bring any thoughts or issues to the Council's attention, you should write in the first instance to:

The Director  
NADRAC Secretariat  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

Ph: (06) 250 6897  
Fax: (06) 250 5904

#### Liaison with other Bodies

In response to a suggestion from the ADR Committee of the Law Council of Australia, the Council decided at its meeting on 5 and 6 December 1996 that an ongoing exchange of information would be useful to the work of both bodies, and that this should be achieved through the regular exchange of meeting agendas.

The Council agreed that similar exchanges of information could also usefully be undertaken with other peak national ADR bodies.

#### Mailing list

The mailing list for this issue of 'NADRAC Notes' has been compiled by the Council's Secretariat. It is proposed that copies of other publications prepared by the Council, and approved for circulation by the Attorney-General, will be distributed to people on the Council's mailing list.

If you are not interested in receiving any further material from NADRAC, or if you would like your organisation added to the mailing list please advise:

The Administrative Officer  
NADRAC Secretariat  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

Ph: (06) 250 6842  
Fax: (06) 250 5904

