

NADRAC Notes

Quarterly Newsletter

Note from the Chairperson

Since our last edition of 'NADRAC Notes', the Council has been very productive. It has now completed its report '*Primary Dispute Resolution in Family Law: A Report to the Attorney-General on Part 5 of the Family Law Regulations*', and its '*Alternative Dispute Resolution Definitions Paper*'. Both were presented to the Attorney-General in March of this year, and are now available from the Council Secretariat or on the Council's web page.

At present, NADRAC is finalising a discussion paper prepared by its Diversity

Committee which addresses the effect of human diversity upon issues of fairness and justice in alternative dispute resolution. The Council will be publishing the discussion paper, a substantial document, in August this year. The discussion paper will consider a number of issues previously given limited attention by the ADR community. The provision of fair and just procedures and outcomes for *all* ADR users is important for the community and for the continued development and success of ADR.

The Council's Registration and Accreditation Committee is also preparing a discussion paper on the issue of training and qualification standards for mediators. This project has been delayed somewhat by the need to devote Council resources to the production of NADRAC's Report on Part 5 of the Family Law Regulations. The Council now proposes to disseminate this discussion paper for public comment in August/September this year. NADRAC regrets the necessity for this delay as it is well aware that there is a great deal of public interest in the work of this Committee. Nevertheless the task is a highly significant one and it is important that the proposed discussion paper should canvass all the relevant issues comprehensively.

I consider both of the forthcoming discussion papers to be of considerable significance and look forward to receiving a broad range of comment on them from ADR organisations, practitioners and clients. When complete, copies of the Diversity Committee's discussion paper will be available upon request from the NADRAC Secretariat. Copies of the Registration and Accreditation Committee's Discussion Paper will be circulated to all individuals and organisations on our mailing list. If you are not on our mailing list and would like a copy of either discussion paper, you should contact the Secretariat.

Finally, I note that, consistent with the current need for restraint in public expenditure, the total funding available to NADRAC in 1997/98 will be significantly smaller than in the last financial year. Consequently, it will be necessary for the Council to reduce the number of issues of NADRAC Notes which it produces this financial year. Accordingly, the Council proposes to publish its newsletter biannually in December 1997 and June 1998. I hope that this proves to be a temporary set back and that the Council will find itself in a better financial position next year.



Professor Hilary Astor (Chairperson)

The National Alternative 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.



Issue No. 2 July 1997

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Note from the Chairperson

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As a result of the need to reduce the number of newsletters this will be my last newsletter as Chairperson before the terms of the current Council members expire on 30 October 1997. Consequently, I would like to take this opportunity publicly to thank all the present members of the Council for their hard work and enthusiasm. All Council members have demanding full time jobs, and their work for the Council places great demands on their time and energy. However, members have responded with great good humour and commitment, and the work of the Council has been enjoyable as well as productive.

I extend sincere thanks to all members of the Secretariat, and especially the Director Serena Beresford-Wylie, for extraordinary hard work in establishing the Council and

supporting its work in the first two years of operation. Organising the Council must sometimes have been akin to the task of herding cats, and the fact that the Council has been so productive owes a very great deal to their patience and perseverance.

I would also like to take this opportunity to express my best wishes to the incoming Council which will be appointed from 31 October this year.



Professor Hilary Astor

Update on NADRAC Affairs



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 (Adviser 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.

The Council's first meeting for 1997 was hosted by Oscar Shub in the offices of Allen Allen and Hemsley, in Sydney on 6 and 7 March 1997. During the course of its meeting the Council met with the Federal Attorney-General and Minister for Justice, Daryl Williams AM QC MP and with Mr Bill Dee and Mr Alan Asher of the Australian Competition and Consumer Commission (ACCC).

The Attorney-General visited NADRAC for morning tea on Friday 7 March and subsequently took the opportunity to talk to the Council about the work currently being undertaken by the Council's Committees. Council members were pleased to have the Attorney-General and his adviser, Ms Adele Byrne, join them for a photograph as a permanent record of his visit (see left).

Mr Dee and Mr Asher spoke about the ACCC's facilitative and enforcement roles in the area of business disputes. They also discussed with the Council the Benchmark Paper developed by the ACCC in conjunction with business representatives, with respect to the Avoidance and Resolution of Small Business Disputes.

The Council's second meeting for the year was hosted by the Principal of the Women's College at the University of Sydney and NADRAC member, Quentin Bryce, on 12 and 13 June. The Council welcomed addresses by Mr Colin Neave, Australian Banking Ombudsman, and Mr Alan Limbury, Chairman of the Law Council of Australia's ADR Committee. Colin is a former Attorney-General's Department representative on NADRAC and the Council was very interested to hear of his experiences in the resolution of banking disputes. Alan Limbury was able to update NADRAC on the activities of the Law Council's ADR Committee and engaged members in a very lively discussion about ethical issues in the field and the development of the Law Council's *Ethical Standards for Mediators*.

Family and Child Mediation

NADRAC'S Report to the Attorney-General on Part 5 of the *Family Law Regulations* entitled *Primary Dispute Resolution in Family Law* was presented to the Attorney-General on 21 March 1997.

Part 5 of the Family Law Regulations, together with certain provisions of the *Family Law Act 1975*, lays down a regulatory framework for the provision of mediation in family law matters by community and private mediators. Part 5 also includes regulations concerning the authorisation of family and child counsellors and the advertising of counselling, mediation and arbitration services in Family Court registries. Since the commencement of the new regulations on 11 June 1996, considerable concern has been expressed about their impact from a number of different quarters.

NADRAC's Report was prepared in response to a request from the Attorney-General on 8 October 1996 for advice on a number of issues that had been raised with him about the operation of the regulations. The Report makes 18 recommendations for changes to both the Family Law Act and Part 5 of the regulations.

Some of the key recommendations made by NADRAC in its 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.

ADR Definitions

In March 1997, NADRAC presented the Attorney-General with the final version of its paper *Alternative Dispute Resolution Definitions*.

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. At present there is no consistency in the way in which terms are applied to various ADR processes. While it is desirable for there to be a diversity of processes available in a developing field such as this, it is also important that the language of ADR should

enable both users and providers to communicate meaningfully about the procedures on offer. While this 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 the ADR field. The writing of the paper has already attracted significant interest in ADR circles.

The intention of the paper is not to impose specific definitions upon particular dispute resolution processes, but rather to assist the development of the field by encouraging a shared understanding of the processes under consideration or discussion. The Council plans to update the paper regularly to take account of new developments and usages.

Building Bridges Overseas

One of NADRAC's members, Dr Greg Tillet, is currently the inaugural Tip O'Neill Fellow at the University of Ulster in Northern Ireland. The Fellowship was launched in 1995 by US President Bill Clinton when he visited the University, and is named in honour of a former Speaker of the US Senate.

The Fellowship is based at the Initiative on Conflict Resolution and Ethnicity [INCORE], a joint program of the United Nations University and the University of Ulster to undertake research and training in the field of ethnicity and ethnic conflict. Greg is spending the six months of his Fellowship completing research on conflict resolution training for military peacekeeping personnel. Greg has, for a number of years, worked with Australian defence personnel prior to departure on peacekeeping operations. He was a keynote speaker at an international conference on these issues hosted by INCORE in June 1996 and INCORE recently published his small book on the topic: "*Conflict Resolution for Military Peacekeepers*". Greg is also undertaking research on ethno-religious conflict (specifically relating to Christian minorities in Moslem countries), completing a paper on research methodology in conflict resolution and working on a typology of conflict resolution methodologies.

Greg tells us that considerable interest has been expressed in Europe about NADRAC and its work. "Colleagues from different countries have expressed surprise, and not a little envy, that Australia has a national advisory body in the area, and complain that, although the use of alternative dispute resolution is increasing dramatically in Europe, there is no focus for discussions about the critical issues with which NADRAC is concerned," Greg said.

There are moves afoot in Europe to encourage the development of common definitions and guidelines for dispute resolution processes and Greg has been invited to attend a European consultation on the development of dispute resolution terminology to be held in Spain in November. NADRAC looks forward to hearing more about these developments.

Congratulations!

In February this year, the NADRAC Chairperson, Hilary Astor, was appointed the inaugural Abbott Tout Chair of Litigation and Dispute Resolution in the Faculty of Law, University of Sydney.

Professor Astor is the author (with Professor Christine Chinkin) of the book *Dispute Resolution in Australia*. She has published extensively on resolution of disputes which involve violence against women and her research interests include diversity and ADR.

It is becoming more and more common for law firms to support legal education by sponsoring a Chair in areas which are of particular interest to the firm. It is thus a most exciting development that the support of the profession for the area of alternative dispute resolution has been expressed in such a concrete fashion. The sponsorship involves a commitment of \$250,000 over five years. The Faculty of Law at Sydney was enthusiastic to secure this Chair and to extend its teaching and research in this area – again an indicator of the growing interest in dispute resolution at tertiary level.

The Council extends its congratulations to the Chairperson and to all those involved in the establishment of this important Chair.

Conferences

The NADRAC Chairperson recently participated in a workshop at the Alternative Dispute Resolution Association (ADRA) Conference, *Challenging Directions: The Future of Dispute Resolution in Australia*, held in Sydney on Saturday 3 May 1997. The Chairperson informed the participants at the conference about the work that the Council was undertaking with respect to training and qualification standards for mediators. She addressed the need for coordinated input from ADR practitioners into policy decisions about ADR and asked the conference to consider seriously the development of a national organisation for ADR practitioners. The participants at the Conference were enthusiastic about these issues and ADRA undertook to convene future meetings to consider them further.

The Chairperson also recently led a workshop at LEADR's Fifth International Conference in Australasia on Alternative Dispute Resolution. The Conference was held in Perth between Friday 9 May and Sunday 11 May 1997.

Professor Astor delivered a short paper on the topic "*The role of government in the regulation of mediation standards and qualifications*" and invited the audience to "workshop" the issues in the truest sense of the term. The workshop was attended by participants from a wide range of Australian organisations in addition to overseas participants from The Centre for Dispute Resolution (CEDR) in the United Kingdom and the Academy of Law in Singapore.

Both the Chairperson and the Director of the Secretariat, Serena Beresford-Wylie, who was also present, felt that the workshop provided very useful input into the Council's work on mediation standards and served to encourage the continuation and development of the debate amongst ADR practitioners on these issues.

Professor Astor and Council member Wendy Faulkes also addressed a conference entitled *Beyond the Adversarial System: Changing Roles & Skills for Courts, Tribunals & Practitioners*, convened by the National Institute for Law Ethics & Public Affairs and the Australian Law Reform Commission in Brisbane on 11 - 12 July 1997. The Chairperson's presentation related to the place of dispute resolution in legal education while Wendy focussed upon mediation training for lawyers, members of the judiciary and tribunals.

Another Council member, Oscar Shub, has been invited in his capacity as National Chairman of LEADR to address an international mediation conference in Singapore to be held on 18 and 19 August 1997.

In addition, Associate Professor Gay Clarke, a member of the Council's Registration and Accreditation Committee, has accepted an invitation jointly to conduct a workshop at the 52nd Annual Conference of the Australasian Law Teachers Association on 2 - 5 October 1997 with respect to issues that the Committee is presently considering in relation to training and qualification standards for mediators.

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NADRAC on the Web

NADRAC may now be found on the Web. The Council has a sub-entry on the Attorney-General's Department home page. Information about the Council together with copies of newsletters and recent publications may be found there. The address is:

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