

National Alternative Dispute Resolution Advisory Council

Introduction

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".

Alternative dispute resolution services, particularly mediation services, are growing 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. In this environment, the Federal Government faces an increasing need to ensure consistent quality and efficiency in ADR services provided to clients of the Federal justice system.

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 before they come to Federal courts. There are already numerous organisations around Australia spending time and money (frequently public money) duplicating effort in developing standards for alternative dispute resolution services. The standards promulgated by these organisations frequently reflect the characteristics of particular organisations and the type of disputes with which they are familiar. This presents obvious difficulties for the Federal Government in seeking to ensure a consistent quality in the administration of justice across Australia.

NADRAC is composed of 14 members representing a range of dispute resolution backgrounds covering judicial and quasi-judicial functions, commercial arbitration, family arbitration and mediation, community mediation and conciliation. Members have links to all the primary stakeholders in the area of dispute resolution including courts, tribunals, the Law Council, law societies, bar associations, ADR practitioner organisations, community mediators, private mediators and the tertiary education sector. Despite this range of backgrounds, and the differing interests represented, the members have achieved a cohesive and highly cooperative working relationship.

Consequently, the Council is uniquely placed to consolidate and develop the substantial, but disparate, work currently being undertaken in Australia on dispute resolution processes. In so doing Council believes that it can make a significant contribution to a more effective and accessible justice system.

The Attorney-General's Department developed draft terms of reference for NADRAC and presented them to the Council for consideration. NADRAC considered the draft at its inaugural meeting and again at its second meeting in March 1996 and suggested a number of amendments including changing the title to "*charter*". The resulting Charter is set out below.

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 research 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 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.

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