



**NADRAC**

NATIONAL ALTERNATIVE DISPUTE  
RESOLUTION ADVISORY COUNCIL

ANNUAL REPORT 2004-2005

# **National Alternative Dispute Resolution Advisory Council**

**Annual Report 2004–2005**

**Canberra**

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The National Alternative Dispute Resolution Advisory Council (NADRAC) was established by the Australian Government to provide independent expert advice to the Attorney-General on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision.

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## **1. YEAR IN REVIEW**

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In its 2004 and 2005 work plans, NADRAC continued to pursue the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision. NADRAC completed a series of important projects during the year. Highlights of NADRAC's work during the 2004–2005 financial year include:

- continuing to consult with Indigenous people about their views on ADR and progressing NADRAC's paper on Indigenous dispute resolution
- responding to a request for advice to Government on legislative reforms for the Administrative Appeals Tribunal
- progressing work on the accreditation of mediators
- providing advice to Government and making submissions on family law reforms, and
- holding the second national ADR research forum.

The 2004–2005 financial year also saw the departure of David Syme from the NADRAC secretariat in November 2004 after having started as director of the secretariat in February 2000. The Council thanks David for the important contribution he made during the time of his directorship. The Council also thanks Heather Proximo for her contribution as director of the Secretariat following on from David Syme.

The valuable diversity in the experience and knowledge of NADRAC members continues with the appointment of Ms Josephine Akee, Mr Fabian Dixon SC, Mr Ian Hanger QC, Mr Greg Hansen and Dr Gaye Sculthorpe. Mr Alan Cambell, Ms Barbara Filipowski and The Hon John Hannaford finished their terms on the Council during the year and I thank them for their important contributions. I also congratulate Ms Norah Hartnett, Mr Warwick Soden, Professor Tania Sourdin, Mr John Spender QC and Ms Lynn Stephen on their reappointment to NADRAC.



Justice Murray Kellam AO

Chair

## **2. ABOUT NADRAC**

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### **Establishment**

NADRAC was established in October 1995 to provide independent advice to the Australian Attorney-General on policy issues relating to ADR. The need for a national body to advise the Commonwealth on issues relating to the regulation and evaluation of alternative dispute resolution was identified in the 1994 report of the Access to Justice Advisory Committee, Access to Justice - an Action Plan. NADRAC's charter is included below.

### **Charter**

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.

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.

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.

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.

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 submission must be provided to the Attorney-General as soon as possible after the submission is dispatched.

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, when appropriate.

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.

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

### **3. COUNCIL MEMBERSHIP**

The Attorney-General appoints members to the Council on the basis of their individual expertise and not on the basis of their membership of any organisation. Members come from around Australia and bring to the Council a broad range of experience in the area of dispute resolution.

Justice Murray Kellam AO was appointed as NADRAC's third chair from the beginning of 2004.

#### **Members during 2004–2005**

<b>Name</b>	<b>Position</b>	<b>Date of first appointment</b>	<b>Expiry date of current term</b>
Justice Murray Kellam AO	Chair	1 January 2004	31 December 2006
Ms Josephine Akee	Member	30 August 2004	29 August 2007
Mr Fabian Dixon SC	Member	30 August 2004	29 August 2007
Mr Ian Govey	ex officio	Not applicable	
Mr Ian Hanger QC	Member	30 August 2004	29 August 2007
Mr Greg Hansen	Member	30 August 2004	29 August 2007
Ms Norah Hartnett	Member	30 August 2001	29 August 2008
Dr Gaye Sculthorpe	Member	30 August 2004	29 August 2007
Mr Warwick Soden	Member	11 August 1998	28 April 2008
Professor Tania Sourdin	Member	29 April 2002	28 April 2008
Mr John Spender QC	Member	29 April 2002	28 April 2008
Ms Lynn Stephen	Member	29 April 2002	28 April 2008



## Profile of members as at 30 June 2005

### **The Hon Justice Murray Kellam AO (Chair from January 2004)**



Justice of the Supreme Court of Victoria and a former president of the Australian Institute of Judicial Administration and of the Victorian Civil and Administrative Tribunal (VCAT). Justice Kellam has been a strong supporter of alternative dispute resolution (ADR) within the court and tribunal system and led the development of a broad-ranging and innovative ADR program within VCAT. He has undertaken mediation training at Harvard University and has been involved in the delivery of mediation training to the judiciary in Papua New Guinea.

### **Ms Josephine Akee**



Ms Josephine Akee is a Torres Strait Islander Family Consultant with the Family Court of Australia in Cairns. Ms Akee has been a member of the Family Law Council since 2002 and has been a member of the Queensland Women's Consultative Group (1995), the Torres Strait Islander Steering Group of National Prevention of Child Abuse and Neglect (1995-96) and the Queensland Taskforce on Women and the Criminal Code (1998-99).

### **Mr Fabian Dixon SC**



Mr Fabian Dixon SC is a prominent family lawyer in Hobart. He was a member of the Family Law Council from 1998-2001, and was a member of a joint NADRAC/Family Law Council Committee which provided advice to the Government on Parenting Plans. He was President of the Law Council of Australia in 1998-99 and President of the Law Society of Tasmania in 1992-93. He was appointed Senior Counsel in 2003.

### **Mr Ian Govey**



Deputy Secretary, Civil Justice and Legal Services, Commonwealth Attorney-General's Department. His areas of responsibility within the Department include courts and tribunals, alternative dispute resolution, family law, legal assistance, native title, indigenous law and justice and Commonwealth legal services. Mr Govey has been appointed by the Attorney-General as an ex officio member of the Council.

### **Mr Ian Hanger QC**



Mr Ian Hanger QC is a leading commercial dispute resolution practitioner in Brisbane. He is an accredited ADR specialist with the Bar Association of Queensland, a Fellow of the Institute of Arbitrators and Mediators Australia and former Director and Queensland Chair of LEADR. He is a member of the Court of Arbitration for Sport and a member of the panel of conciliators for the International Centre for Settlement of Investment Disputes. Appointed Queen's Counsel in 1984, Mr Hanger was chair of the 1988 Committee of Inquiry into the Industrial Conciliation and Arbitration Act and was Senior Counsel assisting the 1988 Parliamentary Judges Commission of Inquiry and of the 1997 Connolly/Ryan Inquiry into the effectiveness of the Criminal Justice Commission.

### **Mr Greg Hansen**



Mr Greg Hansen was a partner of the Newcastle law firm, Torpey and Hansen, for 12 years. Since retiring from active legal practice, Mr Hansen has been involved in business as a retailer, grazier, vigneron, restaurateur and business consultant, and has trained as a commercial and personal mediator. He achieved the rank of 2nd Lieutenant in the Australian Army and has been active in community affairs, including as an Alderman and Councillor with Newcastle City Council.

### **Ms Norah Hartnett**



Federal Magistrate, Melbourne, formerly a barrister specialising in family law and a solicitor working in company, insurance and family law; formerly a member of the Victorian Bar Ethics Committee and member of the Family Law Section of the Law Council of Australia. Trained in mediation, Ms Hartnett has extensive expertise in the use of ADR within the court system.

### **Dr Gaye Sculthorpe**



Dr Gaye Sculthorpe is a full-time member of the National Native Title Tribunal and has been involved in the mediation of native title applications in Queensland, New South Wales and Victoria and is a member of the Tribunal's Agreement-Making Liaison Group. She is also a member of the Australian Heritage Council and member of the council of La Trobe University. Gaye is a descendant of the Pyemairrener people of North Eastern Tasmania.

### **Mr Warwick Soden**



Registrar of the Federal Court of Australia, Sydney, Mr Soden has extensive experience in relation to ADR in the justice system. He is a member of the Federal Court ADR Committee and the Practice and Procedure Committee in matters concerning ADR. Mr Soden has played a major role in relation to ADR programs and initiatives in the Federal Court and the Supreme Court of NSW.

### **Professor Tania Sourdin**



Professor, Law and Dispute Resolution, and Director, Conflict Resolution Research Centre, La Trobe University; member of the Administrative Appeals Tribunal, member of the NSW Consumer, Trader & Tenancy Tribunal; mediator with the NSW Retail Leases Dispute Unit and several other organisations. She has extensive experience in alternative dispute resolution training and is a lead trainer for LEADR. Prof Sourdin has conducted research and independent reviews of a range of ADR and litigation schemes. She has published extensively on ADR and is author of *Alternative Dispute Resolution* (2002)

### **Mr John Spender QC**



Mediator in private practice, appointed Queen's Counsel in 1974, Acting Justice of the NSW Supreme Court 1994–1995, practised extensively in corporate and commercial law and other areas of litigation, served four terms as a member of the Federal Parliament until 1990, Australian Ambassador to France between 1996 and 2000. Mr Spender has undertaken mediation training with LEADR, Bond University and Harvard Law School.

### **Ms Lynn Stephen**



Coordinator of the Community Mediation Service in Bunbury, WA, which deals with a range of neighbourhood and family matters. Ms Stephen has qualifications in nursing, health science and family mediation; received a Churchill Scholarship to study family mediation in the United States and United Kingdom, member of the Family Law Pathways Advisory Group (2000–2001)

## **Previous members of Council**

- Professor Laurence Boulle (previous chair)
- Professor Hilary Astor (previous chair)
- Ms Helen Bishop
- Ms Quentin Bryce AO
- Mr David Bryson
- Mr Alan Campbell
- Associate Professor Gay Clarke
- Professor Jennifer David
- Dr Mary Edmunds
- Ms Magdeline Fadjar
- Ms Wendy Faulkes
- Ms Barbara Filipowski
- Mr Danny Ford
- Ms Susan Gribben
- The Hon John Hannaford
- Mr Oscar Shub
- Associate Professor Kathy Mack
- Mr Richard Moss
- Ms Sue Pidgeon
- The Honourable Justice Nahum Mushin
- Mr Colin Neave
- Mr Kurt Noble
- Ms Bernadette Rogers
- Mr John Steele
- Mr Philip Theobald
- Ms Josephine Tiddy
- Dr Gregory Tillett
- Ms Kerrie Tim

## Secretariat

### *Functions*

NADRAC is supported by a secretariat located in the Civil Justice Division of the Commonwealth Attorney-General's Department. The functions of the secretariat are:

- to undertake research on ADR issues being considered by the Council
- to provide policy advice to the Council
- to respond to public, government and other enquires on behalf of the Council and represent the Council, as required, in a variety of forums
- to draft Council and committee reports and discussion papers
- to draft all Council and committee correspondence, letters of advice and other material including the Council's annual report and its newsletter
- to provide secretarial, administrative and other support services, especially in relation to Council and committee meetings including the preparation of agendas and papers for meetings, minute-taking, the organisation of accommodation and travel, and
- to manage NADRAC's expenditure within the relevant budgetary allocations.

### *Staff*

Staff of the secretariat during 2004-2005 were:

Director (full-time)	David Syme (July – November 2004)
Acting Director (full-time)	Heather Prostimo (January – June 2005)
Legal Officer (part-time)	Elizabeth Sinodinos
Administrative assistance	Jodie Fairall (administrative assistance is provided on a shared basis with the Administrative Review Council).

### *Contact details*

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e-mail	<a href="mailto:nadrac@ag.gov.au">nadrac@ag.gov.au</a>

## **4. MEETINGS**

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NADRAC held three council meetings during 2004-2005. In conjunction with these meetings, NADRAC consulted with a range of people with diverse interests in alternative dispute resolution. Consultation with Indigenous people was a major focus during the year.

### **Hobart – September 2004**

NADRAC met in Hobart on 23-24 September 2004. On 23 September, NADRAC held a public forum to provide an opportunity for the exchange of information about ADR. NADRAC met with the Tasmanian Aboriginal Centre on 24 September 2004.

### **Adelaide – February 2005**

NADRAC met at the Federal Court of Australia (S.A. Registry) in Adelaide on 24 February 2005. Members met with the Hon Justice Diana Bryant, Chief Justice of the Family Court of Australia. The Council meeting was followed by the second national ADR research forum convened by NADRAC at the University of South Australia on 25 and 26 February.

### **Canberra – May 2005**

NADRAC met at the Attorney-General's Department in Canberra on 27 May 2005. The Attorney-General, the Hon Philip Ruddock MP, met with members to discuss ADR issues during the Council meeting.

## **5. NADRAC WORK PROGRAM**

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### **Work Plans**

Each year, NADRAC provides a forward work plan to the Attorney-General. Work plans were developed for the 2004 and 2005 calendar years. NADRAC's work program consists of:

1. Major projects that assist in the fulfilment of NADRAC's charter and address the key priorities that Council has identified for ADR in Australia. These priorities are:
  - the effective use of ADR by courts and tribunals
  - promoting the appropriate use of ADR
  - enhancing quality and consistency in ADR services
  - supporting diversity and innovation in ADR, and
  - improving ADR research.
2. Advice and responses to the Attorney-General or the Attorney-General's Department in relation to specific reforms and initiatives.
3. As resources permit, guidance to, or involvement in, the work of other bodies with an interest in alternative dispute resolution.

### **Major projects**

#### ***Judicial Education***

NADRAC's Judicial Education committee met with representatives of the National Judicial College of Australia (NJCA) to discuss aspects of ADR as relevant to the NJCA's Phoenix Program. The program is a refresher course for experienced judges and an orientation program for newly appointed judges. NADRAC plans to work with the NJCA to promote further judicial interest in ADR.

The judicial education committee members are: Professor Tania Sourdin (convenor), Justice Murray Kellam AO, Federal Magistrate Norah Hartnett, Mr Ian Hanger QC, Mr John Spender QC.

#### ***Indigenous Dispute Resolution***

NADRAC continued to develop a paper that contains guidelines and recommendations about dispute resolution involving Indigenous people. The paper is being developed in close consultation with Indigenous people, including:

- a national Indigenous dispute resolution consultative group
- where feasible, consultation in selected urban and regional centres in Australia, and
- liaison with the Australian Institute of Aboriginal and Torres Strait Islander Studies and other Indigenous bodies.



On 22 April 2005, three members of the Indigenous dispute resolution committee met with 19 Indigenous people in Cairns as part of the consultation process. The committee also discussed the paper during teleconferences with the Indigenous dispute resolution consultative group throughout the year. It is expected that a paper containing general principles, guidelines and strategies for Indigenous dispute resolution will be available early in 2006.

NADRAC expects that case study research will be required to identify effective dispute resolution practices adopted by local communities to solve specific types of problems. NADRAC plans to collaborate with other bodies, including the Federal court which has already started work in this area, with a view to researching and disseminating information about successful Indigenous dispute resolution case studies.

The Indigenous dispute resolution committee members are: Dr Gaye Sculthorpe and Ms Josephine Akee (co-convenors), Mr Greg Hansen, Mr Warwick Soden, Mr John Spender QC, Ms Lynn Stephen.

### ***Legal Framework for ADR***

NADRAC continued to work on its guide for Commonwealth policy-makers and legal drafters who are involved in legislating for alternative dispute resolution. The Statutory Provisions committee met in Adelaide in February 2005 to determine directions for this guide.

NADRAC was consulted during the drafting of the *Administrative Appeals Tribunal Amendment Act 2005*. Most of NADRAC's comments were implemented including a recommendation that parties who are compelled to participate in ADR by the Tribunal should also be required to participate in good faith. The *Administrative Appeals Tribunal Amendment Act 2005* was assented to on 1 April 2005.

The statutory provisions committee members are: Mr Ian Govey (convenor), Mr Ian Hanger QC, Federal Magistrate Norah Hartnett, Mr John Spender QC, Ms Lynn Stephen.

### ***Accreditation of Mediators***

At the 7<sup>th</sup> National Mediation Conference in Darwin on 2 July 2004, NADRAC facilitated a national workshop on the accreditation of mediators. At the conference, the Attorney-General announced a grant of \$30,000 to the National Mediation Conference Limited (NMCL) to build on the outcomes of the accreditation workshop. NMCL has sought input from NADRAC as part of its consultative process.

The mediator accreditation committee members are: Mr John Spender QC (convenor), Mr Warwick Soden, Professor Tania Sourdin.

### ***Government Agency Use of ADR***

NADRAC is of the view that governments can take a lead role in preventing, resolving and managing business disputes and, through this, both reduce the financial and other costs of disputes involving government agencies and, more generally, contribute towards a less litigious society. During the 2004–2005 financial year, NADRAC continued to monitor and encourage Government use of ADR.

The government agency use of ADR committee members are: Mr Fabian Dixon SC (convenor), Mr Ian Govey, Mr Warwick Soden, Professor Tania Sourdin.

### ***Family Law Reforms***

On 10 November 2004, the Government released a discussion paper, *A New Approach to the Family Law System: Implementation of Reforms*, seeking input from the community.

The Attorney-General's Department consulted with the NADRAC family law committee about the discussion paper on 21 December 2004 and the family law committee drafted a response to the paper which was submitted in January 2005. The response covered issues of accreditation, roles of practitioners, compulsory participation in mediation, legal representation for mediation and the role of the child in disputes regarding their care.

The family law committee members are: Federal Magistrate Norah Hartnett (convenor), Mr Fabian Dixon SC, Mr Ian Govey, Ms Lynn Stephen.

### ***ADR Research***

The second national ADR research forum was held in Adelaide on 25 and 26 February 2005 at the University of South Australia. The forum involved 39 speakers and participants. Notes from the research forum are available on the NADRAC website. The forum was opened by Professor Denise Bradley AO, Vice Chancellor, University of South Australia, followed by a welcome from Justice Murray Kellam AO. Chairs of sessions included Tania Sourdin (NADRAC), Professor Dale Bagshaw and Professor Nadja Alexander.

NADRAC has also become involved in surveying courts about their use of ADR. The survey aims to collect ADR data not readily available by other means. This research will contribute to an understanding of ADR usage by courts nationally.

The ADR research committee members are: Professor Tania Sourdin (convenor), Federal Magistrate Norah Hartnett, Mr Warwick Soden, Ms Lynn Stephen.

### ***Other Areas***

NADRAC monitored developments in applications of ADR in a variety of areas during the 2004–2005 financial year including:

- the use of ADR as part of case management in criminal law
- ADR in the context of industrial relations reform, and
- defamation law reform.

### ***Ad hoc Committees***

As required throughout the year, NADRAC may form committees on an ad hoc basis to provide specific advice on matters within its charter.

## 6. SUMMARY OF NADRAC'S SUBMISSIONS AND PUBLICATIONS

This table summarises the major points, recommendations or findings which NADRAC has advanced in its past submissions, report and discussion papers. Documents marked\* are available on NADRAC's web-site ([www.nadrac.gov.au](http://www.nadrac.gov.au)).

Date	Description	Key points
February 2005*	<b>2nd National ADR Research Forum</b> Notes from forum	A mix of panel and group discussions on: <ul style="list-style-type: none"> <li>• Research methodologies: a comparison of different methods and recognition that different approaches to ADR research should be shared among researchers.</li> <li>• Commissioning research: different courts and government agencies have varying research needs. Communication between researchers and stakeholders should be encouraged.</li> <li>• Overcoming research impediments: broad categories of impediments were identified relating to data access, time management, funding, networks and methodology. Groups discussed possible solutions.</li> <li>• Achieving research goals: discussions highlighted the importance of communication and forming research networks.</li> </ul>
January 2005*	<b>Family law reforms Submission</b> in response to the Attorney-General's Department's discussion paper <i>A New Approach to the Family Law System: Implementation of Reforms</i>	Implementation of the reforms should address the following issues: <ul style="list-style-type: none"> <li>• The required skills, roles and accreditation level of the parenting adviser need to be clarified, particularly to avoid compromises to neutrality. Currently, there are too many responsibilities for one person and some of them are not compatible with the provision of ADR services.</li> <li>• Objectives of mediation need to be defined: operational and evaluation criteria should be clearly articulated, especially as these goals will determine the character of the mediation process and the mediator's role.</li> <li>• Successful implementation of the reforms is resource-intensive. Different models, criteria and resources will be required in rural and remote areas – funding must be adequate and on-going.</li> <li>• While compulsory mediation is generally supported, it is important that focus on agreements does not supersede the best interests of the child. In this respect, concentration on parental decision-making is preferable. Compulsory mediation must also be properly resourced.</li> <li>• Parents should decide for themselves if they wish lawyers to be present at joint parenting sessions. Having lawyers present at some stage of the process may be helpful in providing parties with support and advice.</li> <li>• Parenting plans may not be effective in the long term, as</li> </ul>

		<p>they can become convoluted and inflexible to changing circumstances. Appropriate content for plans needs to be clearly defined to address this. Yet plans can be useful in defusing conflict in the early post-separation stage and for identifying agreed issues between parties.</p> <ul style="list-style-type: none"> <li>• There should be no presumption of equal parenting time: such a presumption suggests parents' interests are ahead of the best interests of the child. The presumption also neglects the unique circumstances of each family which may require different arrangements. Where the presumption is viewed as the norm, parents will feel their alternative, mediated arrangement is a failure.</li> <li>• There need to be appropriate mechanisms to ascertain the views of children in the decision-making process.</li> </ul>
November 2004	<b>Defamation</b> Comments on Attorney-General's Department's outline of possible national defamation law	Explicit reference should be made to ADR processes. Mediation is especially useful for defamation matters. There is no reason why court processes, including costs, should be different for defamation matters.
August 2004*	<b>Pre-action PDR and Family Law Rules 2004</b> Letters to Family Courts of Australia and Western Australia	The requirement for pre-action PDR in the Family Law Rules 2004 is desirable, but there is a need to monitor its impact, including: <ul style="list-style-type: none"> <li>• increased demand for PDR services, and</li> <li>• a possible increase in inappropriate referrals.</li> </ul>
August 2004*	<b>Accreditation of mediators — compendium of legislation</b>	Provides a listing of Commonwealth and State and Territory legislative provisions covering referral to mediation and accreditation of mediators
August 2004	<b>Judicial education</b> Letter to CEO of National Judicial College of Australia	Advice about the content of judicial education sessions
July 2004*	<b>Workshop on mediator accreditation</b> Notes from workshop	Discussions raised a number of issues: <ul style="list-style-type: none"> <li>• An essential aspect of accreditation is to define the boundaries of mediation.</li> <li>• An overarching mediation system is needed.</li> <li>• Inappropriate mediators cannot be removed without legislation.</li> <li>• Accreditation plans should be careful to not over-regulate and hence stifle the practice.</li> <li>• Consider the accreditation standards developed in other jurisdictions.</li> <li>• Accreditation should be segmented for different areas of practice.</li> </ul>

## Previous Years

Date	Description	Key points
June 2004*	<b>Submissions in response to NADRAC accreditation paper</b>	The document consolidates the 32 submissions received in NADRAC's March 2004 paper on mediator accreditation. An overview is also provided.
April 2004*	<b>Federal Civil Justice System Strategy Paper</b> Comments on Attorney-General's Department strategy paper	Provides comment on overall paper and specific recommendations, including: <ul style="list-style-type: none"> <li>• the need to develop effective dispute resolution practices by legal profession and also government agencies</li> <li>• ADR should be seen as resolving disputes 'through the most appropriate process' rather than at the 'lowest appropriate level'</li> <li>• need for increased Indigenous representation on the National Native Title Tribunal</li> <li>• appropriate skilling of judicial officers conducting an ADR process.</li> <li>• good quality data collection and evaluation of the civil justice system (including ADR) is required to underpin performance improvement</li> <li>• link civics education material to dispute resolution skills</li> <li>• consider facilities for court-connected ADR services in rural, regional and remote areas</li> <li>• clarify the roles and responsibilities of lawyers involved in 'unbundled' legal services representing parties in ADR</li> <li>• obligation on courts and legal practitioner to advise parties about ADR</li> <li>• pre-action protocol to encourage settlement may require changes to rules so that costs can be charged for pre-litigation work</li> <li>• agrees with the abolition of mediation fees in the Federal Court, but the issues of fees for ADR need to be considered more broadly</li> <li>• value of facilitative processes with regard to expert evidence, and</li> <li>• explore greater sharing of resources with State and Territory dispute resolution services.</li> </ul>

April 2004*	<b>Legal Services Directions</b> Submission to Attorney-General's Department on the Review of the Legal Services Directions	Changes to the Legal Services Directions should be an element of a broader strategy involving: <ul style="list-style-type: none"> <li>• a focus on the prevention of disputes in the first place</li> <li>• a commitment to use ADR where disputes occur, both before and during litigation</li> <li>• improved dispute resolution practices by those involved in Commonwealth litigation and legal services</li> <li>• the development of high standards of ADR practice, and</li> <li>• broader whole-of-organisational changes to the prevention, management and resolution of disputes involving Commonwealth agencies.</li> </ul>
April 2004*	<b>ADR a better way to do business</b> Summary of conference proceedings	The paper summarises the papers and workshops presented at NADRAC's September 2003 Conference 'ADR: a better way to do business' which covered approaches to contractual, consumer, workplace, small business and complex industry dispute resolution.
March 2004*	<b>Who says you're a mediator? Towards a national system for accrediting mediators</b> Options paper	The paper aims to stimulate discussion and obtain information prior to the July 2004 National Mediation Conference. It sets out principles underpinning mediator accreditation, outlines options for a national mediation accreditation system, and puts forward a proposal for an organisation that would accredit accrediting organisations. Written responses were invited.
March 2004	<b>National Competition Council Assessment 2003</b> Letter to chair of NCC	Raises issues about references to mediation and arbitration in NCC 2003 assessment on the SA Poultry Meat Industry.
March 2004*	<b>ADR Research: A resource paper</b> Resource paper for ADR researchers	The paper is intended to promote discussion and assist those who are researching dispute resolution processes, programs, systems and practices. It provides resources and guidelines for different aspects of ADR research, namely: <ul style="list-style-type: none"> <li>• Context and system</li> <li>• Objectives</li> <li>• Accessibility</li> <li>• Effectiveness</li> <li>• Clinical research</li> <li>• Integrating research, policy and practice</li> <li>• Future strategies.</li> </ul>

March 2004	<p><b>Court referral to ADR: Criteria and research</b>  Joint paper by NADRAC and AIJA, authored by Kathy Mack</p>	<p>Provides a thorough analysis of existing research examining criteria or factors on which courts and tribunals could base decisions to refer a dispute to ADR. It concludes that:</p> <ul style="list-style-type: none"> <li>• there are very few general referral criteria which reliably indicate whether or not ADR will be effective in any particular dispute</li> <li>• there are a number of practical steps a court or tribunal can take to develop a valid program of referral to ADR</li> <li>• this task is best undertaken by each court or tribunal in light of its own context, program goals, jurisdiction and case mix, potential ADR users, local legal profession and culture, internal resources and external service providers.</li> </ul>
March 2004	<p><b>Amendments to Administrative Appeals Tribunal Act 1975</b>  Comments to Attorney-General's Department</p>	Legislation-in-confidence

<p>March 2004</p>	<p><b>Child Custody Inquiry</b>  Letter to Attorney-General at Council's own motion, in response to the Report of Standing Committee on Family and Community Affairs into child custody arrangements in the event of family separation</p>	<ul style="list-style-type: none"> <li>• Supports the call for greater emphasis on ADR</li> <li>• If there is to be a clear statutory requirement to promote certain outcomes, then the process be called 'conciliation' rather than 'mediation'</li> <li>• Mandatory mediation can be an effective process, subject to appropriate assessment and professional standards. Issues to be addressed include <ul style="list-style-type: none"> <li>• meaningful involvement</li> <li>• scope of dispute resolution processes</li> <li>• establishing compliance</li> <li>• assessment</li> </ul> </li> <li>• Supports the concept of an entry point in principle, but that there be a degree of flexibility and discretion in the means by which people access the proposed new family law system.</li> <li>• A new Families Tribunal could lead to another formal layer in the family law system. Need to clarify</li> <li>• The relationship between Tribunal conciliation and earlier dispute resolution steps</li> <li>• The role of the Tribunal conciliator</li> <li>• Training and qualifications of Tribunal members</li> <li>• Agrees with the principle of child focussed and child inclusive practices</li> <li>• The appropriate timing for a referral to ADR varies widely from case to case</li> <li>• In implementing the recommendation for legal training courses in dispute resolution, the amount of study be defined or quantified</li> <li>• Supports the development of a wider family conferencing model, subject to flexibility and cultural appropriateness.</li> </ul>
<p>Jan. 2004</p>	<p><b>Standards Australia Comments on Standard on Dispute Management</b>  (Revision of AS 4608-1999)</p>	<ul style="list-style-type: none"> <li>• Standards could be re-titled dispute management systems</li> <li>• Objectives should focus more on eventual outcomes of the system</li> <li>• Emphasis should be on skill development in dispute management</li> <li>• Organisation culture is critical and should receive prominence</li> <li>• Coverage of suggested standard may be too broad</li> <li>• Relationship to risk management standard requires clarification</li> <li>• Proposed standard may not be relevant to some types of organisations</li> <li>• Give consideration to retaining the existing as well as the proposed new standard</li> <li>• Evaluation should include qualitative and quantitative elements</li> </ul>



Dec 2003	<b>Community Justice Centres</b> Comments on NSW Law Reform Commission issues paper 23	Notes that the paper already makes extensive reference to NADRAC material and draws attention to issues of mutual interest.
Oct. 2003*	ADR in Business Conference papers	A selection of conference papers and other material on NADRAC's conference on Business ADR held on 4-5 September. The conference was structured around the following themes: <ul style="list-style-type: none"> <li>• Preventing and managing contractual disputes</li> <li>• Improving relationships with customers</li> <li>• Improving workplace relationships</li> <li>• Practical solutions for small and medium enterprises</li> <li>• Innovations and strategic initiatives in business ADR.</li> </ul>
Sept. 2003*	<b>Dispute resolution terms</b> Introduction and glossary of dispute resolution terms	<ul style="list-style-type: none"> <li>• Consistency in terms is important but needs to be balanced with diversity and innovation</li> <li>• Terms exist in context and do not of themselves resolve standards, legal and policy issues</li> <li>• Preference for term dispute resolution practitioner rather than third party neutral</li> <li>• Preference for term 'conciliation' rather than 'mediation' to be used where practitioner has an advisory as well and facilitative role</li> <li>• Terms other than 'mediation' may better reflect dispute resolution process offered by courts</li> </ul> <p>A glossary is provided which outlines common usage of dispute resolution terms in Australia.</p>
August 2003*	<b>Shared parenting Submission</b> to Inquiry by the Standing Committee on Family and Community Affairs into child custody arrangements in the event of family separation	<ul style="list-style-type: none"> <li>• Clarify terms and concepts concerning child arrangements after separation</li> <li>• Consider the desirability of equal time arrangements</li> <li>• Assess the risks associated with any rebuttable presumption that children spend equal time with both parents</li> <li>• Support alternative (or 'primary') dispute resolution services to deal with issues arising from such a rebuttable presumption, and</li> <li>• Consult with children themselves about such a presumption.</li> </ul>

August 2003	<b>Family Law reforms</b> Letter to the Attorney-General	Draws attention to NADRAC's consideration of various issues in family law work, including: <ul style="list-style-type: none"> <li>• Terminology, and recommendation for discontinuing the terms 'PDR' and 'Primary Dispute Resolution'</li> <li>• Family Law Rules</li> <li>• Quality framework</li> <li>• Funding for community organisations</li> <li>• Indigenous ADR</li> <li>• Parliamentary Child Custody Inquiry</li> <li>• Contacts order compliance regime</li> </ul>
April 2003*	<b>Report of submissions to terminology paper</b>	Consolidates and summarises the submissions received in response to NADRAC's ADR Terminology discussion paper
April 2003*	<b>Family Law Rules revisions</b> Submission to the Family Court of Australia	<ul style="list-style-type: none"> <li>• The Rules should be user friendly</li> <li>• The proposed practice manual should take into account the needs of agencies apart from the Family Court</li> <li>• The rules should specify 'pre-action' procedures</li> <li>• Consistent terminology is required</li> <li>• Supports criteria for ordering family reports</li> <li>• Support costs consequences flowing from genuine efforts to settle property matters</li> </ul>
April 2003	<b>Family Law Council PDR paper</b> Comments on draft paper	Distinctions between mediation and counselling, and between models of mediation. Need to clarify PDR in legal aid context
April 2003	<b>Australian Standard on the prevention, handling and resolution of disputes</b> Comments on proposed revision to AS 4608-1999	Interim response: <ul style="list-style-type: none"> <li>• No objection to revision</li> <li>• NADRAC report on standards emphasises consultation, review and evaluation of standards, link to other standards.</li> </ul>
Feb. 2003*	<b>ADR research, evaluation and data collection</b> Background paper	Document produced to assist NADRAC round table on ADR research held on 21 February 2003
Dec. 2002	<b>UNCITRAL Conciliation Rules</b> Letter to Attorney-General	Expresses concern about UNCITRAL's International Commercial Conciliation Rules Article 8, which, contrary to Australian practice, provides that information divulged in private session may be provide to the other party unless specified otherwise.
Nov. 2002	<b>Judicial education</b> Letter to Director of Judicial College of Australia	Need for judicial education on ADR

Oct. 2002	<b>Amendments to 19N of Family Law Act</b> Brief comments to Family Law and Legal Assistance Division	<ul style="list-style-type: none"> <li>• Support in principle the proposal to exempt child abuse issues from inadmissibility provisions</li> <li>• proposes that exemption could be extended in order to be consistent with practitioners' duty of care obligations</li> <li>• suggests technical changes</li> </ul>
Sept. 2002*	<b>Family Court Violence Policy</b> Submission to Court's Family Violence Committee	Matters to be taken into account in a policy are the nature of family violence, the risks and impacts of family violence, the appropriateness of PDR processes in cases involving violence, and the need for a systematic approach.
Sept. 2002	<b>Review of Federal Magistrates Service</b> Letter to working group	Stresses importance of data collection
August 2002*	<b>National research priorities</b> Submission to the Department of Education, Science and Technology	Nominates ADR as a thematic priority for national research.
June 2002*	<b>ADR terminology: a discussion paper</b>	Poses a series of questions about how terms are used, and should be used, in ADR. Submissions invited by 31 December 2002
May 2002*	<b>ADR statistics Published statistics on ADR in Australia</b>	Intended as a resource document to guide consideration of ADR data collection
April 2002	<b>Government use of ADR</b> Letter to Attorney-General	<ul style="list-style-type: none"> <li>• Need for reference to ADR and to ADR standards in the Legal Services Directions</li> <li>• Need for ADR clauses in contracts for provision of goods and services to Commonwealth agencies</li> </ul>
March 2002*	<b>What is ADR?</b> Brochure on ADR terms	Simplifies earlier definitions paper
March 2002	<b>Dispute Resolution and Information Technology</b> Draft guidelines	<ul style="list-style-type: none"> <li>• Take into account impact and potential of technology</li> <li>• Consider accessibility, fairness, effectiveness, cost and legal issues</li> <li>• Manage risks associated with delivery of ADR service on-line</li> <li>• Need to match technology to needs of disputes and parties</li> <li>• Develop service and practitioner standards to take account of use of technology</li> <li>• Consider use of technology in other areas, including marketing of ADR, information management, research, education and professional development</li> <li>• Apply change management strategies when introducing new technology</li> </ul>

Feb. 2002	<b>Mediation competencies</b> Letter to Community Services and Health Training Australia	General comment on draft qualification and competencies in community mediation: <ul style="list-style-type: none"> <li>• Consultation</li> <li>• Diversity</li> <li>• Use NADRAC's standards within evidence guides</li> </ul>
Feb. 2002	<b>Recommendations of the Family Law Pathways Advisory Group</b> Letter to Attorney-General	<ul style="list-style-type: none"> <li>• Supports the direction of the FLPAG's report</li> <li>• Need for well researched and targeted promotion of non-adversarial approaches</li> <li>• Reference to Quality Framework Submission (2002-01)</li> <li>• Support for case assessment, but noting complexity of the task</li> <li>• Need for consistent terminology (refers to 2001-11)</li> <li>• Need for evaluation of innovative models of service delivery</li> </ul>
Jan. 2002*	<b>PDR Quality Framework</b> Submission to Attorney-General's Department in relation to consultation paper proposing a quality framework for PDR service under the Family Law Act	<ul style="list-style-type: none"> <li>• Support for overall goals of proposal</li> <li>• Avoid too much emphasis on organisational performance at expense of practitioner competence</li> <li>• Need to link with other professional/service groupings</li> <li>• Take into account elements in an appropriate code of practice as outlined in NADRAC's standards report</li> <li>• Some additional standards required vis a vis family services, especially family violence/child abuse)</li> <li>• Give greater prominence to complaint handling</li> <li>• Keep 'essential' obligations and responsibilities within the regulations themselves</li> <li>• Need to clarify implementation issues - costs, compliance, infrastructure.</li> </ul>
Dec. 2001*	<b>ADR In E-Commerce</b> Submission to Expert Group on e-commerce re discussion paper on Dispute Resolution in e-commerce	<ul style="list-style-type: none"> <li>• Need for consultation and coordination in e-commerce ADR</li> <li>• Consistency in terminology required</li> <li>• Independent research and evaluation of on-line ADR is vital</li> <li>• Intake, assessment and preparation processes are essential in light of role of third parties (eg credit providers), dispute dynamics, power balance, representation; nominal fees may not be appropriate</li> <li>• Important to match the communication medium to the parties and to the dispute</li> </ul>
Nov. 2001	<b>Family Law Act terminology</b> Letter and background paper on the need to review the PDR provisions of the Family Law Act and Federal Magistrates Service Act	<ul style="list-style-type: none"> <li>• Need for consistency in PDR terminology</li> <li>• Need for a review of the FLA</li> <li>• Current provisions need to reflect current PDR practices</li> <li>• Statutory protections also require review</li> </ul>

August 2001	<b>Definitions</b> Brief discussion paper on need for common language in ADR	Presents arguments for and against consistent terminology in ADR and asks for comment
August 2001	<b>Franchising Code of Conduct</b>	<ul style="list-style-type: none"> <li>• Need to address termination issues, and resolve ambiguity surrounding ‘imminence of resolution’</li> <li>• Address issue of site of mediation, especially in context of on-line ADR</li> </ul>
May 2001	<b>ADR/PDR terminology</b> Background paper for meeting convened by NADRAC between Family Court, Federal Magistrates Service and Attorney-General's Department	Identifies issues surrounding use of terminology for PDR/ADR in the family law systems
May 2001	<b>Federal Magistrates Service Draft Rules</b> Submission to Registrar of Federal Magistrates Service	Reiterates previous advice on Federal Magistrates Service of December 1999

April 2001*	<b>Standards for ADR</b>	<ul style="list-style-type: none"> <li>• Recommends framework (= guidelines for developing standards, a code and enforcement of code by appropriate means); recognise diversity</li> <li>• Service providers to adopt and comply with code of practice</li> <li>• Service providers to have a complaints mechanism</li> <li>• Examine feasibility of ADR Ombudsman</li> <li>• Monitor complaints</li> <li>• Compliance based predominantly on self-regulation</li> <li>• Compliance with code of practice as part of Commonwealth contracts</li> <li>• Other governments also to require compliance with a code</li> <li>• Consumer education activities to encourage code</li> <li>• Mandating bodies give special attention to quality</li> <li>• Review of statutory provision</li> <li>• Determine need for accreditation on a sector by sector basis</li> <li>• Principles suggested for accreditation of practitioners</li> <li>• Accrediting bodies develop mutual recognition</li> <li>• Selection process to be fair, transparent, effective</li> <li>• Engagement of practitioner based on knowledge, skills and ethics, not necessarily tertiary qualifications</li> <li>• Training providers inform participants of expected outcomes</li> <li>• Training take account of (framework); be performance based, and use best practice learning strategies</li> <li>• Explore peak body</li> <li>• Resources commensurate with risks and benefits</li> <li>• Improved data collection</li> </ul>
April 2001	<b>On-line ADR Background paper</b>	This is a background paper only and is not intended to state NADRAC's position. It was placed on the web-site, with an invitation for comment from interested parties.

Dec. 2000	<p><b>Criteria for referral to ADR</b> Letter of advice to Federal Magistrates Service</p>	<p>Assessment of suitability is complex. There is a lack of empirical research on suitability criteria. Some factors identified are:</p> <ul style="list-style-type: none"> <li>• Current fear or high risk of violence by or to a party</li> <li>• Allegations of child abuse</li> <li>• An unmanaged mental illness or intellectual disability without appropriate advocacy</li> <li>• A clear statement by one party that they will not participate in ADR or that they ‘want their day in court’</li> <li>• A statement by the parties that they want to resolve their conflict in a non-adversarial forum</li> <li>• Bad faith bargaining, or clear likelihood of this</li> <li>• The intention of one party to use the process to harass the other</li> <li>• Over riding public interest</li> <li>• A matter which is primarily a dispute of fact</li> <li>• Parties who have major, non-negotiable value differences</li> <li>• The ability of the parties to make an informed choice to attend</li> <li>• The capacity of the parties to negotiate safely on their own behalf</li> <li>• The extent to which any power imbalance can be redressed</li> <li>• Lack of commitment by one or more of the parties to resolve the dispute</li> <li>• Any relevant court orders which make ADR difficult (eg a restraining order)</li> <li>• Cultural factors and considerations</li> <li>• Legal representation of the parties</li> <li>• The likelihood that the costs of ADR outweigh its benefits.</li> </ul>
May 2000	<p><b>Administrative Review Tribunal</b> Letters of advice to Attorney-General's Department</p>	Need for specific reference to ADR processes
June 2000	<p><b>ADR data collection in courts</b> Letter to Attorney-General</p>	Need for improved data collection on Court ADR, starting with federal courts and tribunals
March 2000	<p><b>Use of term mediation</b> Letter to Family Court of Australia</p>	Need for consistent terminology

March 2000*	<b>Franchising Code of Conduct</b> Submission to Franchising Policy Council	<ul style="list-style-type: none"> <li>• Recommend research and data collection to establish benchmarks against which information can be measured.</li> <li>• The code provisions should be kept under review.</li> <li>• There is value in making parties participate fully but do not favour the term 'in good faith'.</li> <li>• Oppose requirement for mediator to certify that parties made a genuine attempt to mediate.</li> <li>• Code to refer to mediation as the principal method of DR.</li> <li>• Add a 'case stated' option for a quick, relatively inexpensive and final decision.</li> <li>• Commonwealth could require parties to mediate before enforcing the provision of a franchising agreement.</li> <li>• Recommend use of standards.</li> </ul>
March 2000*	<b>Standards for ADR</b> Discussion paper	<ul style="list-style-type: none"> <li>• Proposed framework for ADR standards</li> <li>• Asked 70 questions for comments</li> </ul> <p>See 2001 - 04</p>
June 2000*	<b>Parenting Plans</b> Joint Letter of Advice to Attorney-General (with Family Law Council)	<ul style="list-style-type: none"> <li>• Encourage use of parenting plans, and use consent orders where enforceability is sought</li> <li>• Repeal registration provisions</li> <li>• Encourage an integrated parenting plans/consent order package</li> </ul>



Dec. 1999*	<b>Federal Magistrates Service Rules and Regulations</b> Part 2 Report to Attorney-General	<ul style="list-style-type: none"> <li>• Provide information/education about ADR through information sessions, brochures, initiating documents</li> <li>• Develop and publish guidelines (indicators/contraindicators) for referral to ADR</li> <li>• ADR practitioner has an obligation to assess for suitability</li> <li>• Approval of ADR service providers by Attorney-General's Department (quality approval process) as apposed to Family Law Regulations for family and child mediators– link to immunity and complaints process</li> <li>• Encourage parties to go to Court to obtain a referral order to ADR</li> <li>• Court personnel should not automatically be qualified as ADR practitioners</li> <li>• Need for standards referral orders (providing certain powers and obligations of ADR practitioner)</li> <li>• Incorporate definitions into rules of court</li> <li>• Immunity/confidentiality should not prevent consumer redress</li> <li>• Regulations should specify that ADR service providers have a complaints mechanisms</li> <li>• ADR practitioner should report back to court on termination (defined headings, but not willingness to cooperate)</li> <li>• Evaluate ADR services</li> <li>• Cost to take account of ADR costs, and refusal to attend ADR</li> <li>• Court should scrutinise ADR agreements</li> </ul>
August 1999*	<b>Diversity: 'A Fair Say'</b> Public guide to managing differences in mediation and conciliation	Provides practical guidelines for managing diversity

<p>March 1999*</p>	<p><b>Federal Magistrates Service - Act</b> (March 1999) Part 1 Report to Attorney-General</p>	<ul style="list-style-type: none"> <li>• ADR should be an integral part of the Court.</li> <li>• Legislation should refer to DR, not ADR processes.</li> <li>• Focus on procedural flexibility.</li> <li>• ADR not a replacement for judicial adjudication.</li> <li>• Emphasise proper assessment, referral and quality.</li> <li>• Set out objectives in a legislative provision.</li> <li>• Legislation should name each DR process.</li> <li>• Use the NADRAC definitions and consistent terminology.</li> <li>• Court to have power to make rules about procedure.</li> <li>• Access to legal representation/advice/other support.</li> <li>• Support a diversity of providers of DR services.</li> <li>• Legislation should address the issue of standards.</li> <li>• Court to use list of appropriate DR providers.</li> <li>• Judge not to adjudicate disputes where s/he has done ADR.</li> <li>• Court to make regulations which set Court ADR fees.</li> <li>• Duty to advise clients of the availability of DR processes.</li> <li>• Require provision of written information about DR.</li> <li>• All/any part of a dispute to be referable to DR process.</li> <li>• Range of DR processes to be available at any stage.</li> <li>• Mandatory referral by qualified assessor is acceptable.</li> <li>• Court evaluation of all its DR processes is vital.</li> <li>• DR providers to have similar immunity to judges.</li> <li>• Implement a complaints procedure (against DR providers).</li> <li>• Court to review agreement in limited circumstances.</li> <li>• Court to be able to terminate a non-judicial DR process.</li> <li>• Court to determine a question of fact/law to assist ADR.</li> <li>• Dispute resolver to provide limited reports to Court.</li> <li>• Non-compliance/refusal to provide essential information.</li> <li>• DR providers-appropriate powers to facilitate outcomes.</li> <li>• Magistrates should have substantial experience in ADR</li> <li>• Legislative protection should not extend to pre-filing.</li> <li>• Court to make rules on a simple, inexpensive process for initiating action within the court without pleadings.</li> </ul>
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Feb. 1999	<p><b>Law Reform Commission of Western Australia Review of the Civil and Criminal Justice System</b> (February 1999) Response to Consultation Paper on The Use of Court-based or Community Alternative Dispute Resolution Schemes and Alternative Forums for Adjudication</p>	<ul style="list-style-type: none"> <li>• Importance of a range of DR processes</li> <li>• Importance of data collection on DR</li> <li>• Confidentiality of court files and details of DR attendance</li> <li>• Importance of criteria for appraisal/screening of each case</li> <li>• Support court with multiple dispute resolution ‘doors’</li> <li>• The ADR process should be adaptable to the particular case</li> <li>• Timing of when ADR might be used</li> <li>• More information about the court and ADR</li> <li>• Incentives for disputants to use ADR</li> <li>• Need to create a change of legal practitioner culture</li> <li>• The state should bear the costs of ADR in the court system</li> <li>• Parties should use external ADR at their own cost</li> <li>• Payment for court-annexed ADR is a complex issue</li> <li>• Appropriate training and qualification standards</li> <li>• A judicial officer who has acted as an ADR practitioner should be disqualified from subsequently adjudicating the same dispute</li> <li>• ADR to proceed on a ‘without prejudice’ basis</li> <li>• Limited statutory duty of confidentiality</li> </ul>
Feb. 1999	<p><b>Small Business Access to the Legal System</b> (February 1999) Advice to Attorney- General’s Department in response to the Suggestions Paper of the Review of Small Business Access to the Legal System</p>	<p>Supported the thrust of the recommendations, but concerned that some recommendations impractical and raise resource implications; need to give attention to processes of implementation</p>
Jan. 1999	<p><b>Workplace mediation</b> (29 January 1999)</p> <p>Submission to Department of Workplace Relations and Small Business in response to Ministerial Discussion Paper: Approaches to Dispute Resolution: A Role for Mediation?</p>	<ul style="list-style-type: none"> <li>• Distinguish mediation from conciliation in industrial relations</li> <li>• Need for assessment and screening of matters for suitability</li> <li>• Proceed to arbitration or adjudication after unsuccessful mediation (ie not proceed to conciliation)</li> <li>• Mandatory mediation acceptable in certain circumstances (a gatekeeper required)</li> <li>• Public and private providers should be able to deliver mediation services; mediators should have working knowledge of the legislation</li> </ul>

Sept. 1998	<p><b>Federal Dispute Resolution</b>  Australian Law Reform Commission  Review of the Adversarial System of Litigation –  Response to Issues Paper No 25 ADR - its role in federal dispute resolution</p>	<ul style="list-style-type: none"> <li>• Benefit of ADR = timeliness, cost effectiveness, flexible outcomes and client satisfaction</li> <li>• Need for a variety of DR processes</li> <li>• Flexibility importance</li> <li>• Gatekeeping and assessment is critical (criteria offered)</li> <li>• Need to properly design the ADR system</li> <li>• Need to establish evaluation criteria for ADR</li> <li>• Timing of ADR important (and early intervention may be appropriate)</li> <li>• Avoid blurring adjudication with facilitative and advisory processes</li> <li>• Supports ADR training for judges</li> <li>• ADR should not be used to reduce funding for courts</li> <li>• Drew attention to diversity paper in relation to NNTT</li> <li>• Safeguards re compulsions in ADR (assessment, etc.)</li> <li>• Standards should include both neutrality and impartiality</li> <li>• Limit immunity</li> <li>• Conditions suggested for confidentiality</li> <li>• Standards – await NADRAC report</li> <li>• Lawyers should advise clients of ADR</li> </ul>
April 1998	<p><b>Small Business</b>  Department of Workplace Relations and Small Business -  Response to ADR Information Kit for Small Business</p>	<p>Editorial suggestions</p>
April 1998	<p><b>Standards Australia - Comment on the proposed Standard on Dispute Resolution</b></p>	<ul style="list-style-type: none"> <li>• Suggests amendments to proposed criteria for ADR processes</li> <li>• Makes a series of editorial suggestion</li> </ul>
March 1998	<p><b>Benchmarks Australian Competition and Consumer Commission Round Table on Small and Large Business Disputes – Comment on Implementation of the Benchmarks for dispute avoidance and resolution - a guide</b></p>	<p>Need to provide information to small business via informal networks  Specific recommendation on additions to proposed kit</p>

Dec. 1997	<p><b>Primary Dispute Resolution</b>  Attorney-General's Department – Response to Discussion Paper on Delivery of PDR Services in Family Law</p>	<ul style="list-style-type: none"> <li>• Confine term 'Primary Dispute Resolution' to mediation and conciliation</li> <li>• Support choice of DR service, accessibility, efficiency, accountability, quality, integrated service panning and policy development , diversion from litigation</li> <li>• Raises issues of accountability in context of outsourcing</li> <li>• Raises issues about the functions of a proposed Office of Family Relationship Services</li> </ul>
Nov. 1997*	<p><b>Diversity</b>  Discussion Paper on Issues of Fairness and Justice in Alternative Dispute Resolution</p>	<p>Identifies challenges for ADR services in responding to diversity and suggests the following be addressed:</p> <ul style="list-style-type: none"> <li>• Dispute resolution system design</li> <li>• Training</li> <li>• Access to ADR services</li> <li>• Cost</li> <li>• Social trends of public concern and interest</li> <li>• Links with associated services</li> <li>• Recruitment of members of minority groups</li> <li>• Use of advocates, legal representatives, interpreters, etc.</li> <li>• and proposes practical guidelines concerning assessment, and modifications and accommodations.</li> </ul>
Nov. 1997	<p><b>Australian Law Reform Commission Review of the Adversarial System</b> of Litigation - Response to Issues Paper No 20 Alternative or Assisted Dispute Resolution</p>	<ul style="list-style-type: none"> <li>• Persuasion of parties to use ADR - unlikely to be appropriate by judicial officers, appropriate for non-judicial officers – early in litigation process</li> <li>• Mandatory mediation requires certain conditions and safeguards (including 'gatekeeper')</li> <li>• Supports diversity of ADR providers</li> <li>• Generally court staff should not move from one DR process to another</li> <li>• Examine immunity – ensure consumer redress possible</li> <li>• Respect party self determination, but also identify criteria for referral to ADR</li> <li>• Need for better ADR data collection</li> </ul>

March 1997*	<p><b>Family Law Regulations</b> (March 1997) Report to the Attorney-General Primary Dispute Resolution in Family Law - on Part 5 of the Family Law Regulations</p>	<ul style="list-style-type: none"> <li>• Compliance with regulation only for those seeking protection of the Act</li> <li>• Amend immunity to enable consumer recourse</li> <li>• Retain tertiary qualification requirements for the present, but consider recognition of specific family law experience in the future</li> <li>• Recognise accountants (under reg 60)</li> <li>• Include ‘admitted’ legal practitioner (eg Clerkships, not university educated)</li> <li>• Limited authorisation scheme for ATSI mediators</li> <li>• Provide means to assist ATSI people gain appropriate tertiary qualifications</li> <li>• Limited authorisation scheme for NESB mediators</li> <li>• Improve access to tertiary courses</li> <li>• Amend subregulation 60(3) – mediation of that kind to general reference to mediation of family disputes</li> <li>• Provide authorisation scheme for ‘true grandparents’ of mediation</li> <li>• Remove subregulation 60(4)</li> <li>• Amendment to wording – sub para 60(3)(b)(ii)</li> <li>• Require at least 3 days specific training in family mediation issues</li> <li>• Independent supervisors should be experienced in family mediation</li> <li>• Include as supervisors people who are eligible for membership of relevant bodies (ie not necessarily current members)</li> <li>• Provide that (a) mediator conducts an assessment or is satisfied that an has been appropriately conducted; and (b) decision to proceed or no could be taken by mediator or intake officer</li> <li>• Remove requirement for written statement and provide that information is provide as appropriate t the case; and specific changes recommended to the nature of information provided</li> </ul>
Feb. 1997	<p><b>ADR Definitions</b> March 1997 Report on Alternative Dispute Resolution Definitions</p>	<p>A report defining term for ADR facilitative, advisory and determinative processes</p>

Feb. 1997	<b>Authorisation of Family and Child Counsellors</b> Letter to Attorney-General's Department in response to request for advice on interim arrangements for the authorisation of Family and Child Counsellors	High level of training and expertise required for family and child counsellors, due to incidence of violence and abuse
Feb. 1997	<b>AFP/NCA complaints</b> Attorney-General's Department - Response to request for advice on Australian Law Reform Commission Report No 82 – Integrity: but not by trust alone: AFP and NCA complaints and disciplinary systems	<ul style="list-style-type: none"> <li>• Define mediation and conciliation</li> <li>• Examine public interest</li> <li>• Carefully consider whether officers from within the police force be used as mediators</li> <li>• Need for adequate training</li> <li>• Relate ADR to good management practices</li> <li>• Consider Standards Australia AS 4269 1995</li> <li>• Provide time limits for processes, with flexibility</li> <li>• ADR should not be considered in some cases – this to be determined on an individual – not 'type' basis</li> <li>• ADR should not be compulsory for complainants, but possibly for members of police force</li> </ul>
Jan. 1997	Benchmarks for Consumer Dispute Resolution Schemes	Include specific reference to situations where ADR may be inappropriate, such as power imbalance
Jan. 1997	<b>Non-consensual mediation in the Federal Court of Australia (January 1997)</b> Letter of advice to Attorney-General's Department -	<ul style="list-style-type: none"> <li>• Mandatory mediation may be appropriate in some circumstances; a properly trained 'gatekeeper' is required, and criteria applied for referral.</li> <li>• Mediators should have the time appropriate to meet the needs of the parties.</li> </ul>
Nov. 1996	<b>Government Service Charter Initiative</b>	In staff training section, address issues of power imbalance and potential biases between consumers and providers
Oct. 1996	<b>Youth Homelessness</b> (October 1996) Submission to Youth Homelessness Taskforce	Address issue of family violence, family dysfunction and power imbalance in considering youth reconciliation services

Oct. 1996	<b>Family Services</b> (October 1996) Submission to Parliamentary Committee into Aspects of Family Services	<ul style="list-style-type: none"> <li>• Not appropriate for preventive family services to be provided by the courts</li> <li>• Provide easy access to a range of DR services</li> <li>• Monitor impact of any new fees for service (for family court counselling)</li> <li>• Attend to issue of family violence</li> <li>• Support provision of quality mediation services provided by State Governments agencies</li> </ul>
June 96	<b>Uniform succession laws</b> Submission to Queensland Law Reform Commission	Reforms to succession laws should make reference to ADR processes in relation to disputes over estates.



## **7. FINANCIAL REPORT**

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NADRAC's expenditure is contained within Outcome 1 (an equitable and accessible system of federal law and justice), Output 1.1 (legal services and policy advice on courts and tribunals, alternative dispute resolution, administrative law, human rights, evidence and procedure) of the Attorney-General's Department's audited financial statements published in the Department's Annual Report. Staff of the secretariat are located in the Department's Civil Justice Division.

Expenditure on NADRAC in 2004-2005 (including secretariat travel costs but not other secretariat costs) is as follows:

<u>Item</u>	<u>Expenditure 2004/2005</u>
Sitting fees	\$8,875.80
Training and conferences	\$537.73
Venue Hire & incidentals	\$1,866.53
Meeting Costs	\$151.64
Domestic Airfares	\$20,073.10
Membership Airline Club	\$177.27
Travelling Allowance	\$10,333.71
Car/Taxi hire	\$3,011.50
Car Parking	\$110.28
Bank/Credit Card Fee	\$15.00
Printing	\$480.00
Stationery	\$23.59
<u>Communication Charges</u>	<u>\$22.66</u>
<u>Total</u>	<u>\$45,678.81</u>



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