ADR Bulletin
ADR Bulletin

Volume 1 | Number 10 Article 4

4-1-1999

Advising the Commonwealth on ADR: the National Alternative Dispute Resolution Advisory Council

Mandy Doherty

Recommended Citation
Doherty, Mandy (1999) "Advising the Commonwealth on ADR: the National Alternative Dispute Resolution Advisory Council," *ADR Bulletin*: Vol. 1: No. 10, Article 4.
Available at: http://epublications.bond.edu.au/adr/vol1/iss10/4

This Article is brought to you by ePublications@bond. It has been accepted for inclusion in ADR Bulletin by an authorized administrator of ePublications@bond. For more information, please contact Bond University's Repository Coordinator.

Developing ADR policy

Advising the Commonwealth on ADR: the National Alternative Dispute Resolution Advisory Council

Mandy Doherty

Background and Role

The concept of a national body to advise the government on ADR was suggested by the Access to Justice Advisory Committee in its report to the Federal Government 'Access to Justice: An Action Plan' in 1994. The then Government accepted this recommendation and the National Alternative Dispute Resolution Advisory Council (NADRAC) came into being in October 1995.

The role of the Council is to provide advice to the Commonwealth Attorney General on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision. It is worth noting that NADRAC's purview does not relate solely to mediation or conciliation, but extends to all dispute resolution that does not involve a judicial decision.

While its Charter lists specific matters upon which NADRAC's advice is sought, NADRAC can, and does, initiate work of its own motion relevant to its Charter and respond to the work of other bodies which involves ADR.

Council members and meetings

NADRAC members are appointed by the Attorney General for set, staggered, terms in order to ensure continuity while refreshing the Council with new ideas and viewpoints. The term of the first Council expired at the end of 1997. A second Council was appointed in May 1998, with the full complement operating from August 1998.

The members of the Council are chosen by the Attorney General for their expertise in various areas of ADR. It is that expertise which they are expected to bring to the work of the Council. Consequently, as members of Council they are not representing the organisation or constituency with which they are associated, but are presenting their individual expert views on the issues that are raised.

The current Council consists of 10 members who have expertise in various fields of ADR, including commercial, family, community, indigenous, personal injury and court-annexed. Current members are Professor Laurence Boulle (Queensland) as Chair, Susan Gribben (Victoria), David Bryson (Victoria), John Steele (South Australia), Kerrie Tim (Queensland), Warwick Soden (NSW), Kathy Mack (South Australia), Barbara Filipowski (NSW), Bernadette Rogers (Queensland) and Richard Moss (ex officio member and Deputy Secretary of the Commonwealth Attorney General's Department, ACT).

The Council meets four times a year in various capital cities. Where possible, it takes the opportunity at those meetings to meet with ADR practitioners and to hear from those with expertise in the various areas of ADR. This Council has met with representatives of the Federal Court of Australia, the Victorian Department of Infrastructure, the Australian Dispute Resolution Association and the NSW Law Society ADR Committee. Its calendar of meetings for the remainder of this year has it meeting in Brisbane on 17-18 June, in Canberra on 16-17 September and in Sydney on 6-7 December.

Work program

The current Council has undertaken various projects since its commencement, effectively in August 1998. It has responded to the Australian Law Reform ➢

'The members of the Council are chosen by the Attorney General for their expertise in various areas of ADR … they are not representing the organisation or constituency with which they are associated, but are presenting their individual expert views on the issues that are raised.'

Published by ePublications@bond, 1999

➢ Commission's Issues Paper No 25 on 'ADR — its role in federal dispute resolution', to the Law Reform Commission of Western Australia consultation draft paper on 'The use of court-based or community alternative dispute resolution schemes and alternative forums for adjudication' and to the ministerial discussion paper circulated by the Hon Peter Reith MP, Minister for Employment, Workplace Relations and Small Business on 'Approaches to dispute resolution: a role for mediation?'.

The Council has also provided input into the Review of Small Business Access to the Legal System being undertaken by the Commonwealth Attorney General's Department. It has responded to the Department's suggestions paper and provided comment on the Department's draft report.

A project that was commenced by the previous Council involved examining the factors which prevented mediation and conciliation from working effectively and suggesting ways to overcome those barriers. A discussion paper was released by the previous Council on 'Issues of fairness and justice in alternative dispute resolution' in 1997. The current Council considered that it should bring this project to a conclusion and is working on producing a practical guide for users and practitioners which it is hoped will be available in June 1999.

The present Council received a specific reference from the Attorney General in January 1999 to provide advice in relation to the use of ADR in the proposed Federal Magistrates Service. The Government is establishing the Service to help ease the workloads of the Federal and Family Courts. It will develop informal procedures to resolve less complex matters more cheaply and quickly.[1] The Council has provided a report to the Attorney General in relation to incorporating ADR into the legislation which creates the Magistrates Service. The second part of the reference involves advice in relation to the incorporation of ADR into the rules of the Federal Magistrates Service.

Developing a framework for ADR standards

Perhaps the Council's main project in terms of interest in the community is that of standards for ADR practitioners. This project is one that the Council is required to undertake pursuant to its Charter, which indicates the importance that the Government attaches to the issue of the quality of ADR services.

The topic is also a challenging one because of the variety of types of ADR services currently available, from mediation through to arbitration. The previous Council commenced work on standards for mediators, holding consultation meetings in several States. The current Council recognises the interest of other ADR practitioners as well in the issue of appropriate professional standards. It is therefore casting its net wider than facilitative ADR and is endeavouring to encompass advisory and determinative ADR in its examination of the issue.

The Council is still at an early stage in its deliberations but given the contentious and broad-ranging nature of this topic, the Council intends to consult widely with all interested parties. It is aiming to produce a discussion paper by September 1999 and welcomes comment on it.

Accessing the Council

More information about the Council, its Charter and its members can be found at its website. The site also contains the annual reports and newsletters issued by the Council together with reports that it has issued such as its discussion paper on issues of fairness and justice in ADR, its paper on ADR definitions and its report on primary dispute resolution in family law. The location of the website is <http://law.gov.au/aghome/advisory/nadrac.htm>.

NADRAC is serviced by a small secretariat that is located within the Commonwealth Attorney General's Department. The secretariat can be contacted by telephone on (02) 6250 6897, by fax on (02) 6250 5911 or by email at <nadrac@ag.gov.au>. ●

Mandy Doherty is the Director of the National Alternative Dispute Resolution Advisory Council.

Endnotes

1. The Hon Daryl Williams AM QC MP, Attorney General, Press Release 496, 8 December 1998.

The ADR Bulletin

The monthly newsletter on dispute resolution

is a Prospect publication

EDITOR:
Elizabeth McCrone

PRODUCTION:
Kylie Pettitt

PUBLISHER:
Oliver Freeman

SYDNEY OFFICE:
Prospect Media Pty Ltd
Level 1, 71-73 Lithgow Street
St Leonards NSW 2065 AUSTRALIA
Telephone: (02) 9439 6077
Facsimile: (02) 9439 4511
http//www.prospectmedia.com.au
email: prospect@prospectmedia.com.au

SUBSCRIPTIONS:
$345 a year, posted 10 times a year.

Letters to the editor should be sent to the above address.

This journal is intended to keep readers abreast of current developments in alternate dispute resolution. It is not, however, to be used or relied upon as a substitute for professional advice. Before acting on any matter in the area, readers should discuss matters with their own professional advisers.

This publication is copyright. Other than for purposes and subject to the conditions prescribed under the *Copyright Act*, no part of it may in any form or by any means (electronic, mechanical, microcopying, photocopying, recording or otherwise) be reproduced, stored in a retrieval system or transmitted without prior written permission. Inquiries should be addressed to the publishers.

ISSN 1440-4540

Print Post Approved PP 255003-03417

Prospect Media is a member of Publish Australia, the Australian independent publishers network.

©1999 Prospect Media Pty Ltd
ACN: 003 316 201