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David Bryson

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Contemporary issues in ADR

Standards for ADR in Australia — yes or no?

David Bryson

Introduction

The National Alternative Dispute Resolution Advisory Council (NADRAC) is about to release a discussion paper on 'The development of standards for ADR'.

Why does the issue of standards either arouse strong emotions on one hand, or complete disinterest on the other?

Arguments for standards in ADR in Australia usually include reasons such as the accountability of practitioners, informed consumer choice, the credibility of the profession and its providers and practitioners, and the need to make governments accountable for their funding or delivery of ADR.

Arguments against standards are often made on the grounds that they will restrict the marketplace, cramp the diversity of ADR practice and hinder creativity. Some arguments simply state that there is no current need and that sufficient protection for parties exists through market choice.

NADRAC's position is that the development of standards would permit promotion of the objectives of ADR, minimise dissatisfaction with its operation, promote service-provider and practitioner accountability and promote the appropriate use of ADR. It believes that this approach is consistent with international developments.

NADRAC's approach to standards

According to the Standards Association of Australia's *Annual Report 1997*, a standard is generally taken to mean 'a published document which sets out technical specifications or other criteria necessary to ensure that a material or method [or person] will consistently do the job it [or he or she] is intended to do' (p 20).

NADRAC acknowledges the documented ethical standards that exist for practitioners and service-providers in Australia, especially for mediators and arbitrators. In an ambitious decision, the NADRAC paper considers the standards issue across facilitative, advisory and determinative ADR processes, and identifies the components of knowledge, skills and ethics of ADR standards.

Due to the diversity of ADR practice and service provision in Australia today, NADRAC has eschewed a single prescriptive set of standards. Instead, the paper provides a framework for practitioners and providers to approach and undertake the development of standards in any area of ADR.

Content of the NADRAC discussion paper

The paper considers the various contexts for ADR in Australia and claims made about ADR in research and anecdotally. It sets out the objectives of ADR and examines the advantages and disadvantages of standards for ADR practitioners in attaining these objectives.

In what is hoped to be an important contribution, the paper outlines the knowledge, skills and ethics which form the basis of ADR standards across a range of processes. General principles to guide practitioners, service-providers or other organisations in the development of such standards are considered, and how they might apply to the specific areas of family mediation, school peer mediation, statutory conciliation and commercial mediation are explored.

Three chapters then deal with issues arising in the attainment, maintenance and compliance of ADR standards. A final chapter discusses the broad issue of the type of regulation that may be appropriate for the ADR industry.

How you can have your say

Central to the NADRAC approach is the principle that specific standards should not be determined by a single body or institution, such as NADRAC, but rather should involve the service-providers and draw on wide consultation with all stakeholders.

NADRAC therefore welcomes comment from any source, but is particularly keen to elicit comment from all persons and organisations with an interest in alternative dispute resolution, including:

- ADR practitioners;
- ADR service-providers;
- parties who have used or are using ADR;
- advisers to parties involved in ADR;
- those who refer parties to ADR;
- government agencies funding or using ADR;
- those involved in training or educating ADR practitioners;
- industry association or organisations using or advocating ADR;
- community groups with an interest in ADR; and
- courts and tribunals.

Following the consultation process, NADRAC will produce a report for the Attorney General containing its recommendations. NADRAC contact details are:

The Director
NADRAC Secretariat
Civil Justice Division
Attorney General's Department
National Circuit
BARTON ACT 2600
Ph: (02) 6250 6897
Fax: (02) 6250 5911
Email: <nadrac@ag.gov.au>. ●

David Bryson is Conciliation Officer at the Workcover Conciliation Service, Melbourne, and chair of the Standards Committee of NADRAC. He can be contacted at <David_Bryson@ workcover.vic.gov.au>.

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