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Standards, the Budget and ADR

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Laurence Boulle

Abstract

Extract:

On 13 June at old Customs House, Brisbane, the Commonwealth Attorney General, Mr Daryl Williams QC, launched the NADRAC report A Framework for ADR Standards. The report is commented on by David Syme and David Bryson in this issue of the Bulletin.



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Standards, the Budget and ADR

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On 13 June at old Customs House, Brisbane, the Commonwealth Attorney General, Mr Daryl Williams QC, launched the NADRAC report *A Framework for ADR Standards*. The report is commented on by David Syme and David Bryson in this issue of the Bulletin.

It is fair to say that this contribution to the standards debate has been a long time coming. Apart from its protracted gestation (and apart from what, for some, are its rather modest recommendations) the report is significant for the procedure it adopted in coming to the various recommendations. NADRAC's earlier discussion paper, *The Development of Standards for ADR* (March 2000), was considered and discussed at public forums attended by 240 interested parties in all States and Territories. NADRAC also received approximately 40 written submissions on the paper.

The public forums and written submissions did not exactly uncover an 'urge to surge' on the matter of standards within the ADR community. However, they did reveal significant support for the development of standards on an incremental and localised basis. As is to be expected, this was justified for a wide range of reasons familiar to the ADR community, many of which are referred to in pages of the report.

There is still likely to be resistance in some quarters to any formal development of ADR standards despite the community support which has legitimated NADRAC's position. Here, one of the concerns is the supposed 'institutionalisation' of ADR which any development of standards is said to signify.

Of course, few people object to institutionalisation if it means the increased acceptance and understanding of ADR processes in the community. Neither is it unwelcome where new programs become sources of referrals to practitioners.

However, institutionalisation through

standards is regarded as problematic where it would involve regulation or quasi-regulation by government or professional bodies.

As explained by David Syme and David Bryson in their article, NADRAC rejects direct regulation in favour of self-regulation in the ADR field for the next period of its development. The avoidance of direct or indirect state regulation comes at a price, however, and in this case the price is the development of appropriate codes of conduct by service providers and other ADR bodies, with the necessary supporting infrastructure. This is what the report regards as an appropriate next step for ADR, regardless of whether that is perceived as involving its 'institutionalisation' or 'professionalisation'.

Another indication of ADR's arrival in the institutional mainstream is to be found in the recent Commonwealth Budget, more particularly in the Attorney General's Department Budget Statements 2000-2001.

While there are no major new initiatives in relation to ADR/PDR, there has been a boost in funding for native title matters.

Of significant interest is the performance information contained in the Budget statements. It gives an idea of the large variations in scale and complexity of ADR matters, and of the different performance measures for ADR.

- Now that the Family Court is calling all of its PDR services 'mediation', it expects nearly 30,000 mediations and a resolution rate of 75 per cent (22,000 mediated agreements).
- The Federal Magistrates Service expects 11,000 PDR matters and a resolution rate of 60 per cent.
- The Federal Court expects about 300 assisted dispute resolutions (mediations) and the National Native Title Tribunal 117 mediations.

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- The Family Court estimates that the average cost of a mediated agreement will be \$1172, while the average cost of a future act native title mediation is estimated at over \$12,000 (land use agreements and so on are estimated at \$100,000 per agreement).

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When this kind of detail appears in the Budget we can say that ADR, at least at the Commonwealth level, is no longer on the margins of society.

Due to the need to discuss the NADRAC report in this issue, the next article in the series on case law and ADR will be held over for the next issue. ●

Laurence Boulle, General Editor.

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PROSPECT

Forthcoming events

The International Association for Conflict Management 14th annual conference: Towards a dialogue between conflict theories and practices across paradigms and cultures

24-27 June 2001

Essec Business School, Cergy, France

The International Association for Conflict Management (IACM) was founded in 1984 to encourage scholars and practitioners to develop and disseminate theory, research, and experience that is useful for understanding and improving conflict management in family, organisational, societal and international settings. IACM members represent more than 28 countries and more than 15 disciplines including sociology, psychology, communications, business management, political science, international relations, public policy administration and economics.

For more information contact:

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Asia Pacific Mediation Forum: Reconciliation: a conversation beyond cultural boundaries

29 November-1 December 2001

Adelaide, South Australia

An Asia Pacific Mediation Forum is

being convened by the University of South Australia's Conflict Management Research Group in Adelaide from 29 November to 1 December 2001. The major sponsor for this forum is the World Mediation Forum (WMF), a not-for-profit global organisation committed to the ideals of continuing education, learning and promotion in the field of conflict management and dispute resolution. Regional and national forums are sponsored by the WMF bi-annually in the years between the global WMF Congresses. The next global World Mediation Forum Congress will be in Buenos Aries in 2002. It is hoped that this initiative will encourage other countries in the region to convene future forums.

The theme of this first regional Asia Pacific Mediation Forum was chosen to encourage exploration of the assumptions, knowledge and skills underpinning various intra-cultural conflict management processes, their application to cross-cultural conflicts and to mediation in different cultural contexts.

Updates on the Asia Pacific Mediation Forum will be posted on The University of SA's Ausdispute website: <www.ausdispute.unisa.edu.au>. If you are interested in receiving more information please contact:

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