



NADRAC
NATIONAL ALTERNATIVE DISPUTE
RESOLUTION ADVISORY COUNCIL

NADRAC Annual Report 2010-2011

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The National Alternative Dispute Resolution Advisory Council (NADRAC) provides 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, and promotes the use and raises the profile of alternative dispute resolution.

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YEAR IN REVIEW

The 2010-2011 year was another busy and productive one for the National Alternative Dispute Resolution Advisory Council (NADRAC).

During the year NADRAC delivered three reports to the Commonwealth Attorney-General:

- *Managing Disputes in Federal Government Agencies: Essential Elements of a Dispute Management Plan and Supporting Toolkit*
- *Maintaining and Enhancing the Integrity of ADR Processes: From Principles to Practice through People*, and
- *National Principles for Resolving Disputes and supporting Guide*.

I would like to extend NADRAC's thanks to Mr Clive Price from the Family Law Council and Ms Natasha Mann from the NSW Department of Attorney General and Justice for the assistance they provided to NADRAC in preparing the Integrity of ADR Processes and National Principles reports respectively.

The year 2010-2011 has also seen NADRAC undertaking a new, more active role in Government policy and the development of alternative dispute resolution (ADR) generally. On 16 and 17 July 2010, NADRAC hosted its Fourth ADR Research Forum in Brisbane. The Forum brought together researchers, practitioners and government policy makers to consider current and future research directions. It also provided an opportunity for interaction between researchers and policy makers about the benefits and challenges that ADR presents. It was NADRAC's biggest Research Forum with more than 120 participants from across Australia and overseas attending.

NADRAC also collaborated with the Commonwealth Attorney-General's Department to provide an information session to assist federal Government agencies to understand NADRAC's report on developing dispute management plans.

NADRAC was pleased to see the enactment of the *Civil Dispute Resolution Act 2011*, which stems from a recommendation made in its 2009 report *The Resolve to Resolve - Embracing ADR to improve access to justice in the federal jurisdiction*. This is an exciting step towards ADR being adopted as a more mainstream approach for dispute resolution.

NADRAC has undergone many changes to its membership throughout the past year, welcoming both new members and saying goodbye to several, including some who had served on NADRAC since its early years. Ms Helen Marks, Ms Dianne Gibson and Mr Peter Kell have joined NADRAC's ranks, whilst the terms of Mr Warwick Soden, Mr Ian Hanger AM QC and Ms Norah Hartnett have ended.

In addition, in early 2011 NADRAC farewelled its long-serving Chair, the Hon Professor Murray Kellam AO. NADRAC's new Chair, Mr Jeremy Gormly SC, started in the role in

mid-July 2011, and I look forward to working with him and all the NADRAC members to take the Government's ADR agenda and the use of ADR in Australia forward.

Allison Wood

Allison Wood
Principal Legal Officer, ADR Policy Section

12 October 2011

ABOUT NADRAC

Establishment

NADRAC was established in October 1995 to provide independent advice to the Commonwealth Attorney-General on policy issues relating to ADR. The need for a national body to advise the Commonwealth on ADR issues was identified in the 1994 report of the Access to Justice Advisory Committee, chaired by the Hon Ronald Sackville, *Access to Justice – an Action Plan*. The report recognised the need for a national body to advise the Government and federal courts and tribunals on ADR issues with a view to achieving and maintaining a high quality, accessible, integrated Commonwealth ADR system.

The functions and powers of NADRAC are detailed in its Charter.

Extract from NADRAC's 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 or managing disputes without the need for a judicial decision, and
 - promoting the use and raising the profile of alternative dispute resolution.
- ...
5. 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.
6. 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 ADR. A copy of any such submission must be provided to the Attorney-General as soon as possible after the submission is dispatched.
7. In performing its functions, the Council will consult broadly with ADR 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.
8. 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.

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

NADRAC's full Charter can be accessed on NADRAC's website:

http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/About_NADRACCharter.

NADRAC MEMBERSHIP

The Commonwealth Attorney-General appoints NADRAC members on the basis of their individual expertise, not on the basis of their membership of any organisation. There is no requirement for NADRAC to have a particular number of members – the number of appointees fluctuates. There is also no obligation on the Attorney-General to make appointments for a set length of time or to offer reappointments.

Members come from around Australia, and bring to a broad range of experience in the area of dispute resolution. A list of past members is available on the NADRAC website: <http://www.nadrac.gov.au/>.

At a Glance – Current Membership

Name	Position	Date of first appointment	Expiry date of current term
Mr Jeremy Gormly SC	Chair	18 July 2011	17 July 2014 (nominal)
Professor Nadja Alexander	Member	19 September 2007	28 February 2013
Dr Andrew Bickerdike	Member	1 January 2010	31 December 2012
The Hon Justice Andrew Greenwood	Member	1 January 2010	31 December 2012
Ms Dianne Gibson	Member	1 March 2011	28 February 2014
Ms Margaret Halsmith	Member	4 September 2008	27 May 2013
Mr Tom Howe QC	Member	28 May 2008	27 May 2013
Deputy Secretary, Civil Justice and Legal Services Group, Commonwealth Attorney-General's Department	Ex Officio	Ongoing	-
Mr Peter Kell	Member	1 March 2011	28 February 2014
Mr Stephen Lancken	Member	28 May 2008	27 May 2013
Ms Helen Marks	Member	1 March 2011	28 February 2014
Dr Gaye Sculthorpe	Member	30 August 2004	31 December 2011
Ms Lindsay Smith	Member	28 May 2008	27 May 2013
Professor Tania Sourdin	Member	29 April 2002	31 August 2012

Current Member Profiles



Mr Jeremy Gormly SC – Chair

Mr Jeremy Gormly SC currently practices at the NSW Bar. He was admitted to the Bar in 1985 and became Senior Counsel in 2001. He has appeared in numerous commissions of inquiry as counsel assisting including the CAA-Seaview Aviation Royal Commission, the Thredbo Landslide Inquiry and the Andrew Mallard Murder Conviction inquiry in Western Australia. Mr Gormly is also a practising mediator, and has mediated numerous commercial, equity and negligence actions. Under a joint Commission from the Commonwealth Attorney-General and the Minister for Science and Personnel he was appointed to and completed the task of concluding outstanding claims arising from the 1964 collision of HMAS Melbourne with HMAS Voyager. Mr Gormly is a member of the Legal Profession Admission Board, the NSW Bar Council, the Chairman of one of the Council's Professional Conduct Committee and former Chairman and member of numerous other committees and boards.



Professor Nadja Alexander

Professor Nadja Alexander is Director of the Institute of Conflict Engagement and Resolution (ICER) and Professor of Conflict Resolution at Hong Kong Shue Yan University and she holds honorary academic appointments in Africa and Australia. Professor Alexander is an accredited mediator in Australia and Hong Kong and has extensive experience as a trainer, facilitator and dispute resolution consultant world-wide. An award winning trainer and writer, her books on negotiation and mediation are published internationally, and her work has appeared in the English, German, Russian and Chinese languages. She is editor of the book series, Global Trends in Dispute Resolution and the Kluwer Mediation Blog. In addition to NADRAC, Professor Alexander is a member of the Standards Commission of the International Mediation Institute and the Hong Kong Mediation Taskforce.



Dr Andrew Bickerdike

Dr Andrew Bickerdike is currently the CEO at Relationships Australia in Victoria where he has worked since 1999 specialising in family dispute resolution programs and mediation. He has been a member of the Family Court of Australia Expert Reference Panel since 2007, and lectured at Latrobe University from 1998 to 2004. Dr Bickerdike has qualifications in economics and behavioural science and holds a PhD from La Trobe University in Melbourne.



Ms Dianne Gibson

Ms Dianne Gibson is a psychologist with extensive experience in family dispute resolution policy and law. She recently retired from the position of Director Child Dispute Services in the Family Court of Australia where she was responsible for child dispute services nationally. She has worked in the community sector as Executive Director of Family Services Australia and as the CEO of Relationships Australia (National). Ms Gibson is a past member of the Family Law Council and past Chair of the Board of Management, and later the Advisory Council, of the Australian Institute of Family Studies. Ms Gibson has lectured in family dispute resolution at University of Technology, Sydney for the past 15 years.



The Hon Justice Andrew Greenwood

Justice Andrew Greenwood is a Judge of the Federal Court of Australia. Prior to being appointed to the Federal Court in 2005 Justice Greenwood practised extensively in the fields of intellectual property, competition law and commercial litigation as a partner at Minter Ellison. Justice Greenwood was the Queensland Chair of the Law Council of Australia's Trade Practices and Intellectual Property Committees. Justice Greenwood holds the position of Adjunct Professor in intellectual property and competition law, at the University of Queensland's T C Beirne School of Law and sits on the Advisory Board of the Key Centre for Ethics, Law, Justice and Governance at Griffith University.



Ms Margaret Halsmith

Ms Margaret Halsmith is Director and Principal Mediator of Halsmith Consulting Pty Limited, through which she mediates full time in a wide variety of settings for business, government, families and individuals. She holds Bachelors degrees in Psychology and Arts, is a registered Family Dispute Resolution Practitioner and is accredited by the International Mediation Institute, at the advanced level by LEADR and also under the National Mediator Accreditation System. She has taught Dispute Resolution at Edith Cowan University, University of Notre Dame Australia, Curtin University and the University of Western Australia. Ms Halsmith is the Chair of LEADR Australasia. She is also the Deputy Convenor of the Western Australian Dispute Resolution Association under the auspices of which she convened the sub-committee responsible for the National Mediator Accreditation System. She was Co-convenor of the National Mediation Conference held in Perth in 2008 and has continued as a member of that Board since 2006.



Mr Tom Howe QC

Mr Tom Howe QC is the Chief Counsel, Dispute Resolution at the Australian Government Solicitor (AGS), where he has worked for the last 25 years. Prior to joining AGS, he worked in private practice and as a solicitor with ACT Legal Aid. He is a member of the Federal Litigation Section of the Law Council, and the Council of the ACT Bar Association.



Mr Peter Kell

Mr Peter Kell is a Deputy Chair of the Australian Competition and Consumer Commission. He chairs the Adjudication Committee and is a member of the Enforcement and Communications Committees. Mr Kell serves on the Consumer Policy Committee of the Organisation for Economic Cooperation and Development and the International Consumer Protection and Enforcement Network. He is also a member of the Advisory Board of the federal government's Financial Literacy Foundation. Before joining the ACCC, Mr Kell was the chief executive of CHOICE (the Australian Consumers Association) and a board member of the global consumer organisation Consumers International. He has extensive experience in economic and financial sector regulation and market reform issues in Australia and internationally. Mr Kell also worked at the Australian Securities and Investments Commission as executive director of consumer protection and as its New South Wales regional commissioner. Mr Kell has a BA with Honours in Economics.



Mr Stephen Lancken

Mr Stephen Lancken practises as a mediator and teacher and is the Australian Principal of the Trillium Group. He is also Program Director in Conflict Management and Negotiation for AGSM Executive Programs. Mr Lancken is a member of the New South Wales Law Society's Dispute Resolution Committee. He is an accredited mediator under the National Mediator Accreditation System and an accredited specialist in mediation, dispute resolution and commercial litigation with the Law Society of New South Wales. Mr Lancken is also a director of the Mediator Standards Board.



Ms Helen Marks

Ms Helen Marks is the Director of Alternative Resolutions and Equity at the Department of Defence. Before this appointment, she was the Director of the Alternative Dispute Resolution and Conflict Management program for Defence. Ms Marks worked for many years as a legal officer with the Royal Australian Navy before retiring in January 2005. She has qualifications in Law and Psychology and holds a Post Graduate Diploma in Criminology, Graduate Certificate in Family Mediation and a Masters Degree in Military Law. She has extensive experience in mediation, conflict resolution, group facilitation and negotiation skills.



Dr Gaye Sculthorpe

Dr Gaye Sculthorpe is a full time member of the National Native Title Tribunal based in Melbourne. She mediates native title applications in Queensland, New South Wales and Victoria. She was a member of the Tribunal's Agreement-Making Strategy Group which produced a guide to mediating native title applications. She is a former member of the Australian Heritage Council and has held senior positions at Museum Victoria. Dr Sculthorpe has qualifications in anthropology and history and holds a PhD from La Trobe University in Melbourne. She is a descendent of the Pyemmairrener people of north-east Tasmania. She is also an accredited mediator under the National Mediator Accreditation System.

Ms Lindsay Smith



Ms Lindsay Smith is the Executive Manager for the Dispute Resolution Branch of the Queensland Department of Justice and Attorney-General. She was formerly the Coordinator of the Dispute Resolution Branch's Mackay Dispute Resolution Centre. She is a former Deputy Principal of Mackay State High School and consulted on conflict resolution at FH Collins Secondary School in Canada. She is an accredited mediator under the National Mediator Accreditation System and an appointed mediator under the *Dispute Resolution Centres Act 1990*.



Professor Tania Sourdin

Professor Tania Sourdin is the Foundation Chair and Director of the Australian Centre for Court and Justice System Innovation (ACCJSI) at Monash University. She is a member of several boards and advisory bodies including the Board of the Mediator Standards and the Law Council of Australia Collaborative Law Committee. Professor Sourdin is also a member of the Administrative Appeals Tribunal, as well as a number of panels as an advanced mediator. Professor Sourdin wrote the National Mediator Accreditation Standards and has led national research projects and produced important recommendations for court and non adversarial justice reform. She has conducted research into conflict resolution and disputant perceptions in eight courts and four independent conflict schemes and currently has two major evaluation projects in this area and an ARC project in online dispute resolution. Professor Sourdin has also written and published widely in several areas of ADR, including online dispute resolution, mediation, collaborative lawyering and organisational change.

At a Glance – Former Members

The following members' terms with NADRAC ended during the 2010-2011 year.

Name	Position	Date of first appointment	Expiry date of last term/Retirement date
Ms Elizabeth Kelly	Ex Officio	July 2010	July 2011
The Hon Professor Murray Kellam AO	Chair	1 January 2004	28 February 2011
Mr Ian Hanger AM QC	Member	30 August 2004	28 February 2011
Ms Norah Hartnett FM	Member	30 August 2001	29 November 2010
Mr Warwick Soden	Member	11 August 1998	28 February 2011

ADMINISTRATIVE AND RESEARCH SUPPORT

NADRAC receives administrative and research support from the ADR Policy Section within the Access to Justice Division of the Commonwealth Attorney-General's Department.

In previous years, this support was provided by a small secretariat within the Department. In 2010-2011 the ADR Policy Section was established, to take on a number of new functions and responsibilities as the Department shifted to play a stronger, more proactive role in the development and progression of ADR policy.

In its support role, the ADR Policy Section:

- undertakes research on ADR issues being considered by NADRAC
- provides policy advice to NADRAC
- responds to public, government and other enquires on behalf of NADRAC
- assists NADRAC to draft reports, discussion papers, correspondence, letters of advice and NADRAC's annual report
- manages NADRAC's expenditure within the relevant budgetary allocations.

ADR Policy Section Staff

The Departmental officers in the ADR Policy Section (formerly the NADRAC Secretariat) during 2010-2011 are listed below. These officers work part-time with NADRAC, alongside their other duties.

Name	Position
Ms Allison Wood	Principal Legal Officer
Ms Ruba Rashid	Policy/Project Officer
Ms Lucy Stockwell	Legal Officer
Ms Emma Goulstone	Administrative Officer

The following Departmental officers also contributed to research for NADRAC over the reporting period: Kimberley Williams, Susan Cochrane, Bridget Quayle, Zhen Ye, Bethany Wellings, Saskia van Zanen and Lauren Fieldus.

REFERENCES AND REPORTS

During 2010-2011 NADRAC presented three reports to the Commonwealth Attorney-General on the following topics:

- dispute management in federal government agencies
- the integrity of ADR processes, and
- the key national principles on dispute resolution.

Managing Disputes in Federal Government Agencies

To assist agencies to comply with their obligations under the Legal Services Directions, the Commonwealth Attorney-General asked NADRAC to consult with the Office of Legal Services Coordination to prepare a model dispute management plan.

NADRAC submitted its guide, *Managing Disputes in Federal Government Agencies: Essential Elements of a Dispute Management Plan*, to the Attorney-General on 30 September 2010. The guide aims to help Commonwealth agencies to develop and regularly review dispute management plans, including by ensuring appropriate use of ADR principles and processes. The guide sets out the essential topics and issues that agency-specific plans should address. Each plan will need to be adapted to suit the needs and specific circumstances of each agency.

In addition, NADRAC developed a supporting toolkit to go with the above guide. However, the guide, *Managing Disputes in Federal Government Agencies: Essential Elements of a Dispute Management Plan*, is the primary framework for developing a Dispute Management Plan.

Launch of Report

On 16 February 2011 the Commonwealth Attorney-General launched NADRAC's model dispute management plan, at an Australian Government Solicitor (AGS) Government Law Group Seminar.

The seminar was attended by NADRAC members, government lawyers and Australian public servants, and included a discussion by the Hon Professor Murray Kellam AO and Mr Tom Howe QC on the content of NADRAC's report and what it means for federal agencies. The Attorney-General indicated his strong support for federal government agencies to develop and utilise agency-specific dispute management strategies.

Maintaining and Enhancing the Integrity of ADR Processes

The reference from the Commonwealth Attorney-General concerning the integrity of ADR processes asked NADRAC to advise on 'legislative changes required to protect the integrity of different ADR processes', specifically in relation to confidentiality, non-admissibility, conduct obligations and statutory immunity. This reference provided NADRAC with an opportunity to further explore issues

it identified in its 2009 report *The Resolve to Resolve – Embracing ADR to improve access to justice in the federal jurisdiction*.

NADRAC provided its report *Maintaining and enhancing the integrity of ADR processes: From principles to practice through people* to the Attorney-General on 28 February 2011. NADRAC engaged in extensive consultation processes in preparing the report, including a range of face-to-face consultation sessions and calls for public submissions. Over 40 submissions were received from various interested stakeholder groups, including ADR and FDR bodies, legal profession bodies, government agencies, tribunals, ombudsmen and community legal centres.

The focus of NADRAC's recommendations in this report is on Commonwealth law, but there are also some suggestions about the benefits of States and Territories considering uniform legislation in some areas. NADRAC limited its recommendations for legislative reform to what it terms 'mandatory' ADR processes, where disputants are required by legislation or a court or tribunal order (including consent orders) to try to resolve their dispute through ADR. NADRAC chose to limit its recommendations in this way because there is strong evidence that other ADR processes (termed 'private' in the report) are working very well and are regulated by way of contract. NADRAC took the view that, in light of this, legislative intervention to protect the integrity of private ADR processes is unwarranted.

NADRAC's report includes a chapter focusing solely on the integrity of family dispute resolution processes, and how the elements of conduct obligations, confidentiality, inadmissibility and practitioner immunity play out in the FDR context. The separate treatment of FDR processes reflects the extensive and well-established use of ADR in the family dispute context, with some of the issues discussed in the main body of the report having already been settled in FDR. NADRAC consulted with the Family Law Council (FLC) in developing this chapter, and the recommendations made in relation to FDR have the FLC's support.

National Principles for Resolving Disputes and supporting Guide

NADRAC presented its report *National Principles for Resolving Disputes and supporting Guide* to the Attorney-General on 29 April 2011. This report identifies NADRAC's National Principles for Resolving Disputes (National Principles), initially provided to the Attorney-General in an interim report in July 2010, and is accompanied by a supporting Guide for users of ADR.

NADRAC views the supporting Guide, *Dispute Resolution Guide – A User's Guide to the National Principles for Resolving Disputes*, as a useful tool for members of the public interested in using or understanding more about ADR processes and the National Principles. NADRAC intends for the guide to serve an educational and promotional function, to encourage wider and more effective use of ADR.

MEETINGS AND EVENTS

NADRAC Meetings

NADRAC held three face-to-face meetings during 2010-2011.

Brisbane – 15 July 2010

NADRAC held its 52nd meeting on 15 July 2010 at Griffith University's Southbank Campus in Brisbane. The meeting finalised arrangements for the ADR Research Forum, held at the same venue over 16 and 17 July. It also observed progress on the dispute management plan and national principles references, and discussed the proposed recommendations on the integrity reference.

Ms Alison Playford, (then) First Assistant Secretary of the Access to Justice Division in the Commonwealth Attorney-General's Department attended the meeting as an observer.

Adelaide – 10 September 2010

The 53rd meeting of NADRAC was held in the Level 10 Judges Conference Room at the Roma Mitchell Commonwealth Law Courts Building in Adelaide on 10 September 2010. NADRAC extends its thanks to the Federal Court of Australia for its assistance in providing a venue for this meeting.

The meeting focused on the finalisation of the dispute management reference and the further refinement of the integrity reference recommendations.

Mr Matt Minogue, (then) Assistant Secretary of the Justice Policy Branch attended to discuss NADRAC's strategic direction and future work plan.

Canberra – 16 February 2011

The final NADRAC meeting for 2010-2011 was held on 16 February 2011 at the Robert Garran Offices in Canberra. Discussion at the meeting focused on the integrity reference, with some discussion of the national principles reference.

At the meeting, members farewelled the Hon Professor Murray Kellam AO, recognising his contributions to NADRAC throughout his term as Chair.

Research Forum

NADRAC convened its Fourth National ADR Research Forum on 16-17 July 2010 in Brisbane. The Forum attracted over 120 participants from across Australia and overseas including ADR practitioners, researchers and government policy makers. This forum had the highest attendance of all the research forums NADRAC has held to date.

NADRAC would like to express its thanks to Griffith University for providing the forum venue and to the Research Forum Committee members and Departmental staff who made it such a successful event.

Other Events and Activities

Throughout 2010-2011 NADRAC members received several invitations to speak to various ADR, legal and other bodies, as well as at seminars and conferences.

Dispute Management Strategies – Information Session

Information sessions were conducted on 8 June 2011 for federal government agencies, outlining the advantages of dispute management and encouraging agencies to implement dispute management strategies. These sessions were undertaken by the Attorney-General's Department and the Australian Taxation Office, in collaboration with NADRAC. NADRAC extends its thanks to the ATO for giving it the opportunity to participate in these sessions.

FINANCIAL REPORT

NADRAC's expenditure is contained within Outcome 1 (an equitable and accessible system of federal civil justice), Output 1.1 (legal services and policy advice on family law, federal courts and tribunals, civil procedure, alternative dispute resolution, administrative law and administration of related government programs) of the Attorney-General's Department's audited financial statements published in the Department's Annual Report. The ADR Policy Section is located in the Department's Access to Justice Division.

Expenditure on NADRAC in 2010-2011 (including travel costs of Departmental officers but not other Departmental costs) is outlined in the table below.

Item	Expenditure 2010-2011 (Excluding GST)
Sitting fees	\$1,180.77
Training and conferences	\$3,041.72
Meeting costs	\$7,254.29
Domestic Airfares	\$17,660.82
Travelling Allowance and Accommodation	\$12,929.27
Car/Taxi hire	\$3,588.91
Car Parking	\$155.63
Printing	\$7,807.00
Communication Charges	\$1,107.68
General Office Costs	\$54.54
Departmental Hospitality	\$709.54
Media Monitoring	\$4.40
TOTAL	\$55,494.57