

ADRA – POLICY COMMITTEE

Meeting - 12th August, 1999

PLAN OF ACTION FOR 1999

1. LETS TALK GROUP

Code of Conduct for Mediators

Draft Code now finalised for circulation. Draft covering letter completed. Let'sTalk members will receive final draft and draft covering letter prior to other organisations.

Melbourne Request

Letter drafted to be faxed to the Melbourne Group in relation to their request to use the Lets Talk name - Copy for meeting

Responsibility for Action - Val

Draft Letter to Circulate with Code of Conduct to ADRA members

Letter to include questions such as:

Would members use the code -- Would practitioners subscribe etc

Responsibility for Action - Christine

2. FUNDING

Meeting with Geoff Shaw – NSW Attorney General on Monday, 19th July 1999.
David, Val and Ian put forward a proposal asking for \$46,500 to support our activities.
David and Val wrote a follow up letter and included the ACT Mediation Legislation for Mr Shaw's information. Copies of letters available. We have not had a response yet.

Responsibility for Action – David, Val and Ian

3. DEVELOPMENT OF DATA BASE FOR MEMBERS

ADR Training available in Australia

Rhonda has been researching ADR Training with assistance from Alan Tidwell.

Copy of her report to date to be circulated

Responsibility for Action- Rhonda and Alan

4. DIFFERENTIAL MEMBERSHIP

Development of a proposal to take to the Board for Differential Membership

To be discussed this meeting.

FACSIMILE TO: ADR LINK
Attention: Vanessa Richardson
FROM: VAL SINCLAIR
DATE: 9TH August, 1999
RE: "LETS TALK"

Thank you for your interest in our "Lets Talk Group". We have been meeting regularly since March, 1998. We have had a very productive year. We have now finalised a draft Professional Code of Conduct for Mediators and our next project is to begin discussions in relation to Competency Standards.

At our last meeting we discussed your request to use the "Lets Talk" name for your Melbourne Group. The result of this discussion was as follows:

It was agreed that any group using the "Lets Talk" name would be expected to meet the following requirements.

1. Membership

The criteria for participation in the group is that the member be a representative of an organization involved in the provision of ADR services.

2. The Nature of the Group

We would expect that the group share the same guiding principles. ←

~~That is that the group is:~~

- Representative of a wide range of ADR service providers,
- non-proprietary, *and*
- non-competitive.

That the aim of the group is to work together to discuss areas of mutual interest with a focus on tasks which benefit the ADR Community as a whole.

3. The "Lets Talk" name

We expect that any group using the name "Lets Talk" will agree that the name will not be used for any other purpose than those stated above.

We ask that you table these requirements at your next meeting. Should you be willing to form your group according to these same guidelines then we would have no objections to you using the "Lets Talk" name. We look forward to being advised of the outcome of your meeting and perhaps working together in the future.

Regards,

Val Sinclair

AUSTRALASIAN DISPUTE CENTRE

ACN 074 848 712

Patrons

Sir Ninian Stephen
AK CGMG GCVO KBE

Sir Bruce Watson

Sir Sydney Williams

Justice Vince Bruce

Mr Ian Burgess AO

Mr John Ralph AO

President

Ken Hinds

Judicial Committee
Chairman

Justice Paul de Jersey

International Committee

Andrew Rogers QC

Executive Officer
Juliet Pegler

NATIONAL
Phone: 1800 354 492

INTERNATIONAL
Phone: 61 7 3832 4344

BRISBANE
9th Floor
101 Wickham Tec
Brisbane Q 4000
PO Box 917
Spring Hill Q 4004
Phone: (07) 3832 4344
Fax: (07) 3839 4221

SYDNEY
233 Macquarie Street
Sydney NSW 2000
Phone: (02) 9223 2668

PRECISE OF VIEW

"MOVING TOWARDS A PEAK BODY - A NATIONAL DISCUSSION"

1. ADC PROGRESS

The ADC considers it is a long way down the track of not only considering but in fact achieving peak body status.

The ADC's original aim was to be the peak Alternative Dispute Resolution body and over the past 3 years has worked towards that aim.

Currently it has high profile national patrons, a national Board, a Judicial Committee with representatives in each state and chaired by the Chief Justice of Queensland, an International Committee chaired by Hon. Andrew Rogers Q.C., a New Zealand Committee chaired by Sir Ian Barker Q.C. and many organisational and corporate members.

In summary, the current individuals involved together with organisational and corporate members are as set out in attachment #A.

2. PURPOSE OF A NATIONAL BODY

We see one purpose as being a 'one stop' shop to direct dispute resolution enquires to the members of the National Body albeit there may also be a necessity for the national body to nominate dispute resolvers in its own right and our Memorandum and Articles have been drawn up accordingly.

A second major purpose is to provide a vehicle to allow easy communication between organisations involved in dispute resolution so they may improve their procedures and work together to achieve individual objectives.

We believe there should be unification on the basis of recognition that there are diverse disciplines within the dispute resolution field.

We do not consider it practical to bring domestic, consumer, commercial, technical and professional fields together immediately. As a first step we have sought to bring together those involved in the commercial, technical and professional dispute resolution fields.

We believe there should be a national focus that recognises all fields of dispute resolution as the first step but also accepts that each of the areas of dispute resolution may or will be coming from different focuses and perceptions of what a national body should do. We also believe dispute resolution must lift its profile and consistency of produce which is an objective of the ADC.

We agree lobbying and a national voice must be an aim and that standards of training and accreditation must be set. The dispute resolution profession at the moment appears to have a lowest common denominator approach.

We agree that duplication of resources and information needs to be avoided and recommend that training and information material be provided to increase awareness of dispute resolution techniques.

We don't consider a national body should conduct training courses but that individual bodies should constantly improve courses offered by them.

3. INCLUSIONS WITHIN PEAK BODY

We have commented above, in part on this issue, but in summary we do not consider all areas can be covered initially but that segments or cells recognising the differing orientation of existing bodies should be established.

Within each segment all aspects of dispute resolution should be included.

It may be difficult for a peak body to incorporate all segments and that is why the ADC has commenced by becoming the peak body for commercial, technical and professional dispute resolution in Australasia.

4. FUNDING

The ADC is funded by its members and member organisations.

5. PROVISION OF QUALITY CONTROL AND STANDARDS

Quality control at the level of a national body, given the diversity of interests and disciplines, is difficult. The ADC in its own right is currently formulating basic quality control and reporting procedures for its own purpose.

6. PEAK BODY REPLACING EXISTING BODIES

A peak body should not seek to subsume existing organisations but should assist those organisations to achieve their individual objectives for the improvement and acceptance of ADR procedures.

Ken Hinds
President
Australasian Dispute Centre

THE
INSTITUTE of
ARBITRATORS & MEDIATORS
——
AUSTRALIA

Level 1, 22 William Street, Melbourne, Victoria 3000. Telephone (03) 9629 6799 Facsimile (03) 9629 5250
e-mail instarb@werple.net.au

4th NATIONAL MEDIATION CONFERENCE
APRIL 1998

MOVING TOWARDS A PEAK BODY

1. INITIATIVES TOWARDS A NATIONAL BODY

We, at *The Institute of Arbitrators & Mediators Australia* formed the opinion that the general community and those involved in dispute resolution would benefit from the formation of a national 'umbrella body' for the co-ordination and advancement of alternative dispute resolution. Subsequently, the Institute resolved to take an active role in the formation of such a body.

The Institute convened a meeting on 3 September 1997 to discuss with other organisations the concept of an umbrella organisation. At that meeting there was consensus that an 'umbrella organisation', encompassing as many organisations involved in alternative dispute resolution as possible, would be beneficial to the member organisations, to the community generally and in advancing the use of alternative dispute resolution.

Three further meetings have since been convened and the umbrella organisation is progressing expeditiously. It is expected the Memorandum & Articles of Association will shortly be registered and the 'Forum for Dispute Resolution in Australia' will be official. The response and support for the Forum has been overwhelming as news of the Forum has filtered throughout the industry and amongst user groups.

Discussions at the various meetings confirmed the Institute's perception that the dispute resolution industry is presently fragmented with many organisations developing products and services which, through cooperation and collaboration with member organisations, could have been fast-tracked saving valuable resources.

2. THE PURPOSE OF A NATIONAL BODY

The objectives of the Forum are to :

- (a) facilitate an Australia-wide collaboration between dispute resolution organisations and users.
- (b) receive and consider issues relating to dispute resolution and to convene sub-committees to respond if considered appropriate.
- (c) assist in achieving an international reputation for Australia as a 'specialist' provider of dispute resolution training and services through its member organisations.
- (d) encourage the development and use of best practice in the dispute resolution.
- (e) compile and disseminate information on dispute resolution
- (f) act as a channel for gathering and disseminating information on dispute resolution
- (g) act as a Representative organisation; to liaise with policy makers and government authorities to promote the effective use of dispute resolution.

In the long-term, we believe the Forum will play a pivotal role in developing Australia's role in dispute resolution in the Asia-Pacific region. The mission statement has been designed carefully to reflect this goal.

3. WHO MIGHT BE INCLUDED

Initially, it was proposed that membership of the Forum would be open to all national bodies with an interest in dispute resolution. This would not only include organisations whose core purpose is the resolution of disputes but also those whose members play a role in dispute resolution generally. However, there is a desire amongst members to encompass as many organisations as possible. The current mission statement [see Appendix A] is

therefore being reviewed to bring it into line with the Articles of Association which provide for the inclusion of State-based and Local-based organisations.

4. FUNDING

It is considered important to ensure that the Forum is inexpensive to operate and makes effective use of member's time and resources. Funding for the Forum will be by member subscription and a budget is currently being drafted to enable the setting of appropriate subscription levels.

5. QUALITY CONTROL

One of the objectives of the Forum is 'to encourage and develop the use of best practice in dispute resolution'. This includes standards and accreditation. In due course, a sub-committee will be formed to develop an appropriate strategy to pursue this objective, in conjunction with as many key industry representatives as possible.

6. ROLE OF EXISTING LOCAL BODIES

Members of the Forum are strongly of the belief that the Forum should not replace existing organisations.

A key principle of the Forum and, it is thought one absolutely essential to its success, is to facilitate the services and development of its dispute resolution provider members and also to assist its 'user' members. The Forum absolutely should **not** have any dispute resolution provider, nominator or user role which may cut across the legitimate interests of its provider or user members. This is crucial if there is to be any useful coordinating role otherwise the free flow of comment and information may be compromised.

A high level of trust is required by all members to ensure a free flow of information. Members who are competitors in the industry will be working together and sharing information for the benefit of others. It may be said that success depends on the level of trust generated.

7. CANVASSING

The current membership of the Forum has developed directly from the various networks of those invited to the inaugural meeting in September 1997. Each member has introduced other dispute resolution organisations and/or user groups to the Forum. It is believed that this Forum will continue to grow as the Network continues to expand.

In due course, following incorporation and the election of the inaugural Chairman and Executive, the Forum will develop a strategy for canvassing opinions and progressing particular issues.

APPENDIX A

FORUM FOR DISPUTE RESOLUTION IN AUSTRALIA

MISSION STATEMENT

to encourage and facilitate collaboration between
national organisations so that Australia
achieves an international reputation for excellence
in the effective resolution of business and other disputes.

4th National Mediation Conference 4-8 April 1998

MOVING TOWARDS A PEAK BODY – A NATIONAL DISCUSSION

The International Institute for Negotiation and Conflict Management ("IINCM") was established in 1996 by seven universities. The Institute works with business, practitioners and universities to promote the benefits of negotiation and conflict management.

IINCM does not compete with people working in these areas, whether as mediators, trainers or facilitators. Our mission is to assist those exploring these fields by expanding the market for their services. Since January 1998, IINCM has not offered "membership" of the Institute. Its aim is to expand the field for all.

The debate about the need for a national peak body is one that has been gathering momentum in recent months. IINCM is delighted to contribute to this discussion. This paper describes IINCM's operations and its views on a national peak body.

The Status of Present Initiatives

IINCM already provides many of the services that a national peak body might offer. IINCM offers the following services to the negotiation and conflict resolution community at large:

- a visible, professional office with full-time, dedicated staff;
- a network of consultants and Board members in all major Australian cities;
- unbiased representation and lobbying on behalf of the negotiation and conflict resolution industry (through the Drafting Committee for Standards Australia or the ACCC's Roundtable on Business Disputes);
- promotion of the use of negotiation and conflict resolution services to potential consumers (through industry events and conferences);
- promotion of the professional image of negotiation and conflict management (through media liaison and industry events);
- a high-quality Magazine, Calendar of Events and web-site to all practitioners (through IINCM's Information Service);
- open forums where practitioners can meet to discuss their concerns and join together to pursue activities of joint benefit (currently operating in Sydney, Melbourne, Perth, Adelaide, Canberra and Brisbane); and
- information-sharing and facilitation of dialogue between membership bodies.

However, IINCM does not

- accredit mediators or training organisations; or
- run training courses.

IINCM is aware of a number of other organisations that also provide similar services. Organisations such as LEADR, the Institute of Arbitrators & Mediators, the Conflict Resolution Network, ADRA, SADRA and VADR all represent their members with a number of benefits. However, because these services are limited to their members, they cannot be true national peak bodies since they fail to represent the entire field.

More recently, however, two initiatives have been launched which aim to move beyond membership services to representing the entire body of practitioners:

- The Australian Dispute Resolution Forum, an initiative of the Institute of Arbitrators and Mediators; and
- The Peak Body Project launched by ADRA and its counterparts.

Each of these is described in detail in other papers. One question for the Conference is how much these initiatives should be taken forward, unified or discontinued.

The purpose of a national body

IINCM agrees with the purposes of a national body set out above and is already working to achieve most of them.

However, IINCM believes that a national body should not itself train or offer mediation in order to avoid competition with those it is trying to represent. Equally, a peak body needs to represent the entire industry, not just its "members", even if these are representative organisations. The body should work to represent the whole field.

Who might it include?

IINCM believes that a national body should be as inclusive as possible and should cover all segments of the negotiation/ conflict management industry, including those working in facilitation, mediation, arbitration, statutory dispute resolution or training. The community, commercial, family and industrial sectors should all be represented.

This can be achieved either by direct participation by a range of practitioners or by a forum of representative bodies.

Should a peak body seek to provide quality control?

In the longer term, and in consultation with the National Alternative Dispute Resolution Advisory Committee ("NADRAC"), a national peak body could set standards of training and/or accredit mediators as a means of protecting consumers. This issue is being investigated by NADRAC to see if the public interest justifies regulation. IINCM believes that initiatives should await NADRAC's final report.

Would a peak body replace existing local bodies?

IINCM prefers the model of a peak body that coexists with the rich range of existing local groups. There is no contradiction between having organisations focussed on the needs of their members and having an overarching body at a national level such as an industry "council." In such a model, local organisations and/or practitioners could pay a fee to support the national body (eg as for the Advertising Council), fees could be charged for services or the body could seek to raise its own funds.

What process should the industry use to make decisions?

INCM would like this session to result in better understanding by practitioners of the roles and potential of existing organisations and better understanding of each other by those co-ordinating the various peak body initiatives. The present information deficit in is hampering logical planning. Sharing information and coolly assessing the industry's needs is a good first step to developing more co-ordinated action. Input from a wide range of practitioners would be useful before initiatives proceed.



Moving towards a peak body- a National discussion

1. Initiatives towards a national body - present status

LEADR is an Australasian non-profit organisation with more than 2,000 members, most of whom are trained mediators. Although LEADR began in 1989 as an association of lawyers, its membership base has expanded to include mediators from all professions and others engaged in management and facilitation roles. As such, LEADR is already a national body with chapters throughout the country and in New Zealand. However, it is clear that LEADR's accreditation scheme, which is open largely to those who have been trained by LEADR, prohibits LEADR from being representative of all people interested and involved in dispute resolution in Australia.

In 1994 LEADR convened a meeting of representatives from Law Societies and Bar Associations with a view to establishing a consistent approach to the issues of standards and accreditation of mediators amongst the legal profession. This was seen as the starting point for discussions with all ADR groups to ascertain whether some consistency of standard could be achieved in Australia. For various reasons, these goals were not achieved at that time.

2. The purpose of a national body

A number of purposes could be achieved through the establishment of a representative national body. These include:

- increased recognition of ADR services
- the establishment of consistent standards for the practice of each of the dispute resolution processes included in the concept of "ADR"
- the establishment of an effective group to represent the interests of ADR practitioners in discussions with industry, government and the judiciary
- the dissemination of information of interest to all practitioners, through newsletters and conferences convened by the national body
- liaison with similar bodies overseas, including SPIDR.

3. Who might it include?

There appear to be three main options. The representative body could be representative of individuals; of groups; or of groups and individuals.

4. Should a peak body seek to provide quality control of mediation/dispute resolution standards and accreditation?

The establishment of a peak body should not result in uniformity at the expense of diversity. The peak body could be effective in establishing minimum standards, the adherence to which would entitle an organisation to membership of the peak body. The issue of quality control is one of the most important issues facing practitioners of ADR and organisations representing their interests. A peak body could assist in addressing this issue with input from all sections of the ADR community.

5. Would a peak body replace existing local bodies?

If an organisation provides a service or a set of services over and above those provided by the peak body, that organisation should continue to exist. If the peak body became representative of each of the existing representative bodies, logically those existing bodies would survive. However, if the peak body were to provide for individual membership and membership services, the effectiveness and usefulness of some of the existing bodies would be brought into question.

6. What process should the industry use to canvass opinions and make decisions?

This work has largely been done by NADRAC. In order to avoid duplication of effort, we should await the findings of NADRAC before initiating any moves towards a peak body.



National Alternative Dispute Resolution Advisory Council

4th National Mediation Conference 1998

Concurrent Session,

Standards, Accreditation and National Peak Body

11.00am – 12.30pm Wednesday 8 April 1998

MOVING TOWARDS A PEAK BODY – A NATIONAL DISCUSSION

Paper Prepared By Serena Beresford-Wylie,
Director, NADRAC Secretariat

Introduction: About NADRAC

NADRAC is an independent advisory body to the Federal Attorney-General. The Council comprises members who are selected for their personal expertise in ADR issues. With the exception of the ex officio member, Mr Richard Moss, Deputy Secretary, Attorney-General's Department, the members of the Council do not represent any other organisation or persons.

Under its Charter the Council is tasked with providing the Attorney-General with advice on the development of high quality, economic and efficient ways of resolving disputes without the need for a judicial decision. Amongst other things, this covers practice and professional standards for the provision of alternative dispute resolution services, the accountability and evaluation of Commonwealth ADR programs, the need for data collection and research and the level of community awareness about alternative dispute resolution. In particular, the Council has an interest in the ADR programs utilised by the Federal Government and by Federal Courts and Tribunals.

In performing its functions NADRAC is required to consult broadly with a wide range of government and non-government organisations that are active in the ADR field. NADRAC is keen to build strong bridges with other ADR organisations to ensure that the advice that it provides to the Attorney-General is accurate and reflects the current thinking of ADR practitioners and other interested parties.

As an independent Government advisory body, however, it would be inappropriate for NADRAC to align itself too closely with the work of any other bodies. Furthermore, as the Council's role is to advise the Attorney-General, it would be inappropriate for NADRAC to enter too vigorously into public discussions about the future directions for ADR. The Council must be careful not to prejudice any advice that it may subsequently submit to the Attorney-General. Subject to any involvement that the Federal Government may ultimately decide upon, these issues remain ones for ADR practitioners and ADR users to decide. While NADRAC is happy to assist by raising issues for consideration and thereby broadening the ambit of discussion, the Council will not seek to impose, or persuade others to, any particular view. It is on this basis that NADRAC has prepared this Paper.

Initiatives towards a national body – present status

NADRAC is aware that there are presently a number of organisations that are actively involved in moves to establish a national organisation that is representative of ADR practitioners. It is understood that some of these bodies are the Australasian Disputes Centre, the International Institute for Negotiation and Conflict Management (IINCM), the Institute of Arbitrators and Mediators Australia, which has proposed the establishment of the Australian Dispute Resolution Forum, and the Alternative Dispute Resolution Association (ADFA). There may be others.

It is noted that some of these organisations are, or have a special relationship with other organisations that are, active in the provision of dispute resolution services. There is a question about whether it is appropriate for a national representative body to have any involvement or perceived interest in the provision of ADR services in competition with other ADR practitioners whom the body seeks to represent.

The purpose of a national body

NADRAC would support the establishment of a national body or bodies to represent ADR practitioners. The range of ADR activity is very broad. It can be difficult for NADRAC, the Government and courts and tribunals to get a clear picture of the views of ADR practitioners without engaging in very expensive and time consuming consultation processes. A broadly based national body would serve as a source of coordinated advice about the views of the ADR practitioners that it represents.

The value of this initiative would be significantly reduced if the national body could not claim to represent the vast majority of practitioners or if there were a number of representative bodies with no clearly defined constituencies.

Who might it include?

Careful thought needs to be given to this issue. In view of the diversity of ADR practise, it may be impossible for any national body to adequately represent all ADR practitioners. An attempt to establish a body of this kind may lead to internal tensions and disputes that may ultimately endanger the survival of the representative body. It may be more practicable to develop a network of national bodies that separately represent, for example, arbitrators, mediators, conciliators, and/or institutional conflict managers. These might develop from existing organisations although there would be a need to clarify and distinguish their respective responsibilities. Consultative arrangements could be instituted between these organisations to ensure that a coordinated view was put on issues of mutual interest.

Consideration also needs to be given to the need for any national organisation to be adequately supported by state, territory and local organisations that can facilitate liaison and consultation with practitioners at the local level.

Another issue that needs to be considered is the role of ADR user groups, such as courts and tribunals, industry bodies and businesses, in such a national body. Is it appropriate for these user groups to be included? No doubt they will have views that are very relevant to the

provision of ADR services which ADR practitioners may support. On other occasions, however, the interests of the two groups may sharply diverge. Would inclusion of these bodies also raise the potential for internal tension and dissent? Do other professional bodies such as, for example, those representing lawyers, accountants and psychologists include such user groups. If they are to be included is there a way to identify the different interests of the two groups and reduce the possibility of internal dissent?

Is there a need to differentiate between individuals and organisations that provide training services and those that actually provide dispute resolution services? What about individuals and organisations that provide conflict management services? What about academics and government officers working in the field of dispute resolution?

What relationship will the national body have with other professional organisations, such as law societies, that presently claim to represent ADR providers under their own professional umbrellas? Should the members of those organisations be required to join yet another representative body?

How would it be funded?

Membership subscription

If the organisation is to be funded by membership subscription, will it be on the basis of individual membership, organisational membership or both. If individual membership, will the subscription be additional to subscriptions for other existing ADR organisations and if so, what will be the financial implications for individuals. If organisational membership, how will the subscriptions differentiate between different sized organisations? In either case, what will be the consequences of non-membership? How will individual members / member organisations be equitably represented upon the board or governing council of the national body?

Charitable fund

In the United States and United Kingdom charitable funds play a part in the funding of bodies like this. In Australia, government has traditionally played a larger role. Given the contraction in government in recent years it may be worth examining whether there are sources of charitable funding in Australia that may be available for an initiative of this nature.

However, it is noted that the source of any such charitable funding may have implications for the public image of the national body. For example, it may affect public perceptions if the funding for the national body could be traced to a large multinational corporation, a rich individual with broad-ranging business interests, a group of legal firms or an organisation with well-known political leanings.

Government funding

It is possible that some government funding may be available. While the Commonwealth Government might be a source of funding for a national body, State and Territory governments might also provide funding particularly if the organisation were based in their

jurisdiction. State and Territory governments might also be a source of funding for constituent State and Territory bodies. Guidance as to whether this is likely may be obtained by an examination of the funding for other similar professional and representative bodies. To qualify for any government funding it would be necessary to establish that the organisation was truly representative, that it was not competing with other similar bodies and/or that it was providing a valuable social service.

Should a peak body seek to provide quality control of mediation / dispute resolution standards and accreditation?

It is appropriate that ADR practitioners should take a leading role in the growth of ADR and determining its future path. However, if a body that represents ADR practitioners takes on the role of setting standards it could create the impression that ADR practitioners are merely advancing their own interests. It is noted that other professional bodies, for example law societies and bar associations, have been much criticised on this basis in recent years. Careful thought needs to be given to how this impression may best be avoided. It may be beneficial if quality, standards and accreditation functions were to be undertaken by acknowledged experts in the field, acting independently and taking into account the views of ADR users and other interested bodies such as government and the judiciary. Subject to any legislative requirements, the national representative body could then decide whether to reject or support those proposals on the basis of its membership interests.

The role of government

In its report to the Attorney-General on Part 5 of the Family Law Regulations entitled "*Primary Dispute Resolution in Family Law*" of March 1997, NADRAC endorsed the view that governments have a special responsibility for the quality, integrity and accountability of ADR programs provided by courts and tribunals or otherwise funded by government¹. Indeed, NADRAC raised the possibility that government may incur that obligation merely by actively endorsing and encouraging the use of ADR processes in place of judicial determination of legal rights. In any event, the public interest in consumer protection clearly gives governments a role in ensuring that ADR services meet some minimum standards.

Recent developments

In recent years there has been a dramatic growth in legislation dealing with ADR at the Federal, State and Territory levels. The ACT recently became the first jurisdiction to introduce legislation that deals broadly with the provision of community mediation services. The ACT Mediation Act was passed by the Legislative Assembly on 23 September 1997 and will commence operation on 1 July 1998. The purpose of the Act is to ensure that there is a publicly available register of mediators who have been accredited as being competent according to recognised standards (the *ACT Competency Standards for Mediators*). Registered mediators will be those mediators that are registered or accredited by organisations that are themselves "approved" under the Act. Individual mediators that have not been accredited by an approved organisation will be unaffected by the Act and will still be able to

¹. See page 10, citing similar views expressed by the New South Wales Law Reform Commission and the Federal Access to Justice Advisory Committee.

practise. They will not, however, be entitled to the protections that the Act confers on registered mediators.

In the Federal sphere there have been some significant developments in relation to mediation services provided under the Family Law Act. Part 5 of the Family Law Regulations, which commenced operation on 11 June 1996, lays down a regulatory framework for the provision of Family and Child Mediation by community and private mediators. The regulations include provisions as to the quality of service and the training and qualification of mediators. Further to this, the Family Services Council, an advisory body to the Attorney-General, has produced Family Mediation Standards for organisations approved by the Federal Attorney-General. This document addresses required standards for family mediators in terms of principles such as impartiality, conflict of interest etc and responsibilities in screening, assessment and preparation for mediation. It also addresses aspirational standards in terms of knowledge of theory, literature and research and skills in the areas of communication, co-mediation and the mediation process. The standards also address the issues of selection, education and training of family mediators.

Organisations funded to provide Family and Child Mediation under the Family Relationships Services Program (FRSP) are also participating in a quality strategy known as the FAMQIS project which aims to ensure the provision of quality services to clients of the FRSP by encouraging a culture among the organisations of continually improving services.

Would a peak body replace existing local bodies?

As previously mentioned, any national organisation would need to be adequately supported by a network of organisations at the local, state and territory level that can facilitate liaison and consultation with local practitioners.

What process should the industry use to canvass opinions and make decisions?

This is a matter for ADR practitioners to decide. It is noted, however, that there are a number of competing membership organisations and other interest groups in the ADR area. In this environment it will be difficult to generate uniform support for any one initiative for a national peak body. This lends some support to the suggestion for a variety of peak bodies representing different professional interests that could then coordinate their activities at the national level. However, establishing a representative body for mediators, or even for particular mediators such as those providing family and child mediation, may be particularly difficult. There appear to be a number of organisations that provide mediation services and/or mediation training with an interest in taking on at least some representative functions.

Perhaps it would be best for the process to be managed by a neutral organisation that is not perceived as a competitor or potential competitor by other ADR practitioners and organisations, for example a government body or a research / academic organisation.

NADRAC Secretariat
5 March 1998

Victorian Association for Dispute Resolution Inc.

Promoting a Conflict Resolving Community

GPO Box 127A, Melbourne, Victoria, 3001

Moving Towards a Peak Body- a National Discussion

The VADR Committee provides this response to the current debate on development of a peak body, following consultation with VADR members, as input into the discussion on this topic at the 4th National Mediation Conference.

Initiatives towards a peak body - present status

VADR has discussed the idea of a peak body on various occasions over the last 10 years with other ADR organisations, with little eventuating so far from these discussions. Consideration has focussed on similar types of community based organisations such as corresponding bodies in other states, ie ADRA, SADRA etc.

VADR is responding to the current round of discussions on a peak body because we perceive that the issue is being pursued more strongly now, and there are important aspects which require input from all relevant bodies should such a peak body be developed.

VADR wishes to take part in and support constructive initiatives to:

- strengthen coordination of dispute resolution organisations in Victoria;
- strengthen links between community organisations in other States (ADRA, SADRA, MAT, MANT etc);
- form a National Peak Body.

The purpose of a national body

The first question is whether there should be one peak body or several peak bodies, one for each main segment of the broad dispute resolution field. This is explored further below, however in either case there appear to be some useful functions which a peak body could provide. A peak body could:

- unify the mediation/dispute resolution movement and provide a national focal point for the profession;
- lobby at the Federal level and provide an authoritative voice for the industry;
- provide input into the development, and perhaps accreditation, of training programs, which would be conducted by various training providers;
- enhance the professional status of mediation/dispute resolution, and of its practitioners;
- provide a visible, professionally staffed office, and avoid duplication of resources and information.

Who might the peak body include

The first issue here is how broadly inclusive of the range of conflict resolution processes the peak body should be. Should it cover mediation, arbitration and facilitation and the other related processes? VADR believes that the body should include consideration of the full range of dispute resolution processes other than litigation.

The next issue is whether a peak body can fairly, cooperatively and constructively represent those who operate in the diverse arenas of business and commerce, legal practice, family and community environments and many other areas in which mediation is practised. VADR has an open mind on this question at this time, recognising the tensions which might ensue within such a broad body, but aware of the potential benefits of on-going interaction between the various participants, and cognisant of the success of similar bodies eg SPIDR.

A further issue is whom the peak body would have as its membership. It would include practitioners, but would it also be open to non-practitioner supporters, or even customer groups? And would its members be individuals or groups or both?

Should a peak body seek to provide quality control of mediation/dispute resolution standards and accreditation?

VADR believes that a peak body should have input in an advisory capacity into quality control, standards and accreditation processes, but recognises that these functions could be managed by an independent body.

VADR believes that the sound theoretical basis and rigour of the training of community mediators has established a bench-mark for the profession.

Would a peak body replace existing bodies?

This is the most difficult aspect of the peak body discussion. Any replacement of existing bodies may occur over a longer period of time through a transition process. A peak body could gradually develop in stages through cooperation and merging of similar types of bodies.

At the loosest level a peak body could be a consortium of independent bodies, acting as a coordinating vehicle, and as a communication facility. This would allow each current body to retain its independence or to merge with appropriate organisations which each felt comfortable with, under the umbrella of the peak body. This may result in several peak bodies emerging.

Alternatively, a peak body could embrace all existing bodies and members and establish procedures for all sections of the conflict resolution field to have fair and equal opportunity to shape the new organisation. VADR is concerned that any peak body might be dominated by interests from one or more current groups or areas of the field. We are also concerned that the mediation approach which we support, pursue and practise could be diminished within a peak body.

VADR would want to establish certain conditions before joining with other organisations to form a peak body, such as equal standing for the community mediation groups, recognition and protection of the quality of mediation services provided by those working within the community environment, and an operational process within the peak body which is open and inclusive.

What process should the industry use to canvass opinions and make decisions?

This step of bringing together all interested groups for discussion on the issue is the type of process we should continue to pursue. We need to be inclusive and open and communicate effectively with all parties.

Ideally, the formation of a peak body should be the outcome of a decision of all interested organisations, not a fait accompli by one or a few groups.

Options for progress towards the development of a peak body include:

- the formation of a working group to continue the discussion in a systematic and organised manner; this group may be an enlargement of an existing discussion group or may be a new group, but with representation from all interested organisations;
- consideration of one or other of the initiatives already taken, to determine if the proposal can be broadened to achieve a truly representative body with a charter acceptable to VADR and others.

Danny Crossman
VADR Committee

MOVING TOWARDS A PEAK BODY - A NATIONAL DISCUSSION

by Paul Lewis, President, Australian Dispute Resolution Association Inc.

On one hand it is unfortunate that the issues of standards and accreditation stand alongside the issue of a National Peak Body in this session's title because their combination raises the spectre of "the "Gatekeeper".

On the other hand the perceived need that quality control be assured, especially on the part of governments, may arguably be the single most potent factor behind the revival of interest in a national Peak Body.

Purposes of a Peak Body

Fear of the Gatekeeper can be quelled by recognising that standards and accreditation are component parts of the more general issue of quality control and that quality control is but one of many macro issues of relevance to a Peak Body.

The desire of governments, especially the federal government, to have a single representative voice that it or they can refer to is very real. Hilary Astor commented upon it at ADRA's 10th Anniversary Conference on 3 May, 1997 during an Hypothetical on the subject of a Peak Body when she said "One of the problems that I think the Federal Government has is that there isn't at the moment a Peak Body that it can consult on ... issues ... the same sort of issues are going to come in at a State level. The growth area in mediation isn't in community mediation, the growth area, it seems to me, is in Courts and Tribunals and the formal justice system's introduction of alternative dispute resolution."

Other purposes of a Peak Body might include community education, the promotion of ADR within industry and government sectors, continuing education for practitioners, and the sponsorship or conduct of research and writing on dispute resolution.

Who might it include

This is a vexed question. The result of our consultations to date (through our A Peak Body Project commenced 27 October, 1997) indicate a difference of opinion between those who imagine a Peak Body being open to both individuals and organisations and those who see it as being representative of organisations only. Some existing DR organisations that have individuals as their exclusive or dominant base do not want a Peak Body to be a rival and compete for their membership.

One answer to this question is "it depends on how people go about it."

There are at least five theoretical approaches which range on a continuum ranging from highly consultative to highly directive. The following analysis is suggested:

- | | | | | |
|---------------|-----------------------------|---------------------------|----------------------------------|--------------------------|
| 1. A dialogue | 2. The grass roots campaign | 3. The coalition approach | 4. The national council approach | 5. The vanguard approach |
|---------------|-----------------------------|---------------------------|----------------------------------|--------------------------|

Highly consultative/
informal structure

Highly directive/
formal structure

Australia's dispute resolution community is highly diverse. ADRA has been advocating the need for dialogue if a Peak Body which appeals to governments, users, service providers/practitioners from many fields is to evolve and succeed.

ADRA's A Peak Body Project was designed as a consultative facilitation and as such it is closest to being a dialogue than anything else.

How would it be funded?

The funding of a Peak Body is also related to its form. The level of its ambitions is also related to cost. Here again process is critical. The wider the range of stakeholders that participate in the exploration of the possibility of a Peak Body, the higher the probability that any emerging peak body will:

1. Have a soul
2. Have high aims and sound objectives
3. Have numerous supporters able to claim "ownership" of it, fund it and further promote it.

Would a Peak Body replace existing local bodies?

A Peak Body may or may not replace existing local/regional bodies depending upon its form.

This is a hypothetical question if you accept that the answer in reality will depend upon the processes followed by those who wish to explore the issue further. Again, the process dichotomy of a dialogue or the vanguard.

What process should the industry use to canvass opinions and make decisions?

Is there an existing organisation who would be an acceptable neutral to facilitate a consideration of a Peak Body according to an unhurried but definite timetable?

Obviously, all who are interested in participating in a dialogue, a council or a vanguard will

WHERE NEXT?

- NEED TO GO BACK TO OUR CONSTITUENTS CANVAS IDEAS. & DISCUSSION
 - WE NEED TO HEAR FROM EACH OTHER
 - NEED NOT TO UNDERESTIMATE THE POSSIBLE LACK OF TRUST - AMONGST US.
- FORUM SHOULD NOT BELONG TO ANYBODY
IN PARTICULAR

INQIM —

Proposal for their role.

have to address the logistics of central administration and information exchange, opportunities for meetings, tele-conferencing and their costs of participation.

ADRA's position

The Board of Management has not adopted a formal policy position at this stage because our facilitation is only at the half-way mark.

The following observations are therefore the writer's personal opinion:

1. The vanguard approach has the inherent disadvantage that it fosters suspiciousness and devisiveness. Ideally, it needs an event to provide the moment for quick-dialogue and quick indications of support.
2. The formulation of and discussion of possible models without a preceding dialogue about shared values, common concerns and interests and our aspirations, would be undesirable. The recent Constitutional Convention illustrated the intense conflict which is felt by participants when their values and value conflicts between participants are not identified. Substance should not follow form.
3. If there is a mutual commitment to a team-building approach by interested participants, the form of a Peak Body will follow naturally from the substance of their discussions over time.
4. The formation of a coalition of interested 'peakers' may be the most acceptable and most appropriate next step towards the evolution of a well respected and vibrant national body.

I encourage the participants of this conference to formulate an agreed strategy to bring about a Peak Body which is truly representative and reflective of both our diversity and the similarities between us.

Practice - Why?

- Industry should model good dispute resolution process
- Process. Inpart & Openended.
- Resourcing is key issue
 - money where the work is.
- inclusive Geographically - Support from SMTs
- There are key national issues to which medicine community should respond eg Nat Med Title
- Gives us Professional legitimacy
- There are some pitfalls in jumping into a Peak Body.
- HAVE PEAK GROUPS FROM A PEAK/PEAK GROUP
- ROLE OF GOVT. / POLICY UNITS
 - ADVISING
- PEAK BODY'S ROLE WOULD BE TO ENCOURAGE & DEVELOP
- NEED TO RECOGNISE THE UNION / INDUSTRIAL ISSUES.

PURPOSES AND OBJECTIVES.

INCLUSIVE - Include those excluded
Move for Peak Body
Pursue.