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*Supporting and transforming the community of dispute resolution practice by providing leadership, direction and growth.*

## Industry Forum for Dispute Resolution to Council for Alternate Dispute Resolvers

From 22 August 2017- 22 August 2020.

### Dr Katherine Johnson

It has been three years since my last presentation on 22 August 2017 to what was then called the Industry Forum for Dispute Resolution which has since changed its name to the Council for Alternate Dispute Resolvers or Council for Alternate Dispute Resolution otherwise known as CADR. The purpose of this presentation is to remind those involved especially the past members of the Steering Committee about the history of CADR to date.

The idea behind the previous National Industry Forum for Dispute Resolution (IFDR) was precipitated by the amalgamation of the National Alternative Dispute Resolution Advisory Council (NADRAC) into the Attorney General's Department in November 2013. This amalgamation was quite a surprise/shock to the DR community, occurring as it did, with no consultation of any kind between the Australian Government and any DR organisation. At the time, ADRA like many other organisations made submissions to Government about the possible negative impact of that amalgamation; but realised nonetheless, that any consultation with Government would have been difficult given the sheer number of DR organizations with which Government would have to consult; and the lack of any single body/focal point that the Government could easily have accessed for consultation. The absence of such a body, could therefore lead any Government to assume that the DR industry was still not sufficiently mature to have a 'consultation group' with whom it could consult despite years of discussion around this topic.

Recognising the urgency for such a focal point within the DR community, ADRA took the initiative In early 2014, to consult with the major Dispute Resolution organisations in Sydney with the aim to invite a representative from each group to form a steering committee which could consult with Government about the needs and concerns of the DR Industry both on a National and on an International level. The groups consulted at the time were private organisations that did not have any government funding but constituted the major membership organisations for dispute resolvers.

These included, the *Institute of Arbitrators and Mediators (IAMA)*, *LEADR*, *Australian International Dispute Centre (AIDC)*; *Australian Commercial Dispute Centre (ACDC)* *Australian Centre for International Commercial Arbitration (ACICA)*, *Chartered Institute of Arbitrators Australia (CI Arb Australia)*, *The Law Council of NSW*, the *NSW Law Society*, and the *NSW Bar*

*Association.* All these groups agreed to send a representative to participate as part of a steering committee which would organise a Dispute Resolution Forum Day on 14 May 2014 to which all the other DR organisations would be invited.

The first Forum Day was therefore held with about 42 participants nationwide at ADC premises in Castlereagh Street, Sydney. It is not an over exaggeration to say that the day was a resounding success with the participants making it abundantly clear that another similar meeting should be held and that a website should be created for the Industry Forum. The first Forum concluded its work by setting for itself comprehensive **Terms of Reference** which were agreed to and accepted by the members of the then IFDR Steering Committees for 2014; and were again endorsed by the Steering Committees for 2015, 2016 and 2017. They have been attached for further reference.

### 14 May 2014: First Forum Day. Aims of the Steering Committee

On a National level the broad aim for the steering committees was to present a unified voice to government about the varied concerns of the DR Industry as it develops into a profession in its own right instead of remaining as a set of very highly prized and effective skills/tools to be used by every other profession.

On an international level the broad aim was to form a platform of organisations much like a federation that could serve as a focal point with which to develop Australia into a major Asia-Pacific centre for resolving International disputes in line with the current international standards that have already been very successfully set in Singapore and in Malaysia. The steering committees were keenly aware of the very substantial levels of government funding enjoyed by Singapore and Malaysia and believe that Australia should not fall too far behind those markets, despite the lack of funds for the DR industry from the Australian Government.

The steering committee noted the proficiency of the Asia-Pacific markets which held the first Global Pound conference (GPC) in Singapore in March, 2016; and noted Australia's input to the GPC by hosting another very successful (GPC) conference on 29 May 2017 in Sydney. Amongst its many aims the GPC attempts to standardise criteria about mediation on an international scale. Developing an Industry Forum for DR in Australia would also assist early attempts to standardise criteria for mediation internationally which may evolve much like the UNCITRAL rules have evolved for Arbitration. And, having a unified voice and focal point of contact would assist in making Australia a more competitive venue for resolving international disputes in the Asia-Pacific market.

The establishment of the Australian International Dispute Centre (AIDC) in 2010, which became the Australian Dispute Centre (ADC) in 2015, is testament to the Australian Government's initial strong interest in Australia providing Dispute Resolution services on an international scale. And although funding from the Australian Government has since waned, such a federated platform as the IFDR can provide the Australian DR Industry with the maturity it needs to act as a profession in its own right. Such maturity would be evidenced by providing a supportive means to co-operatively deliver dispute resolution services in the Asia-Pacific region on par with any in the world due to the expertise and collaboration of Australian mediators.

## 14 May 2015: Second Forum Day. Changes in the Australian DR Landscape

The second Forum day was set for 14 May 2015 at Ashurst Lawyers again in Sydney. The 2015 steering committee was very mindful that the participants attending the Forum Days in 2014 and 2015 were a very select group; and there has been much discussion about the way this group was selected. There has also been much discussion about whether the right questions were asked at the first Forum in 2014; and whether the questions put by the Forum participants in 2015 were truly representative of all the DR Industry needs. Keeping these concerns constantly in mind the participants of the 2015 Forum posed questions which were later placed on a linked-in site for discussion between all the participants. Throughout all these discussions however, the need for an IFDR web-site remained a pressing concern.

2015 saw enormous changes in the Australian DR landscape with the amalgamation of LEADR and IAMA to become the Resolution Institute (RI) with over 4,000 members; and the further amalgamation of ACDC with AIDC to become the ADC. These amalgamations followed a very successful National Mediation conference in September 2014 which hosted over 600 delegates and was interpreted as a real show of unity by the Australian DR industry in response to the amalgamation of NADRAC into the Attorney General's department in November 2013, and its ultimate 'demise' in 2014.

The result of such enormous change was that very little time remained for an effective and comprehensive IFDR discussion about the issues posted on the linked-in site in 2015 which incorporated the steering committee's terms of reference. It is hoped that such an opportunity will be afforded again, to re-visit these issues.

## 12 August 2016: Third Forum Day. Discussions on the Steering Committee's terms of reference

By the end of 2015 it was obvious that time was required to allow the DR Industry landscape to settle prior to holding the third Forum Day and for this reason the Forum Day was set for 12 August 2016. Being mindful that the Forum attendees tended to be private membership organisations rather than organisations with government funding such as Legal Aid etc. the aim of the 2016 Forum Day was to present a website to the participants that aimed to address the questions:

- What actions were needed to provide a line of communication between Government and the DR Industry on DR issues?
- What could the DR Industry entities do to increase the use of DR techniques in the community?

The third 2016 Forum introduced a possible format for the long-awaited website which could incorporate possible responses to the two basic questions above which set the parameters of the Forum. A second goal was to reconsider some of the steering committee's terms of reference referred to earlier. In other words, a start was made and an opportunity afforded

to the DR thinkers to re-consider questions raised from the first and second IFDR Forum Days for the 'right' questions to be asked.

The program for the 2016 Forum offered each of the organisations, 3-4 minutes to discuss their views about the proposed 'consultative body' and whether the enormous changes in the DR landscape since November 2013 had affected their daily functioning. The 2016 Forum Day introduced the opportunity to consider the possibility of formulating some type of unity such as a 'charter' like the one sent as an example to participants in 2015 for discussion on the linked-in site, or for formulating another type of entity either on-line or otherwise. Although no decision was made the steering committee for 2016 was mindful of the evolving nature of the Forum and recognizes the need for time to allow thoughts to germinate into action.

### 30 May 2017: Fourth Forum Day. Launch of the IFDR Website

The 4<sup>th</sup> 2017 conference revisited the questions posed by the **Terms of Reference** and the possibility of establishing a charter. The steering committee was mindful that the questions posed by the **Terms of reference** had to be reconsidered in light of the changes in the DR Industry and would have to represent not just mediators but also arbitrators, adjudicators and other types of Dispute resolvers. Being mindful that the IFDR meets annually the decisions made at each of the Forum Days around all the issues raised need to be recorded for the benefit of the Industry. The requirement for a website to document such a history was therefore seen to be of prime importance and the first phase of the long awaited web-site for IFDR was finally launched.

The hope of the 2017 steering committee was that collaborating in a federated platform could enhance the possibility of the DR Industry becoming a National profession in its own right, one that can deal not only with its own needs and interests, but can also subsidise and support its own attempts to compete in the Asia-Pacific market. The hope was that the IFDR can assist in making Australia the preferred port of call for international dispute resolution and the successful Launch of its website in Australia was hoped to contribute to the formation of international standards for mediation as a social change agent.

### 10 August 2018: Fifth Forum Day.

#### Change of Name to Council for Alternate Dispute Resolvers:

The fifth conference was held at the Australian Disputes Centre in Castlereagh Street, Sydney and was attended by Haley Jarick from *Resolution Institute (RI)*, Deborah Lockhart from *Australian Dispute Centre (ADC)*, Deborah Tomkinson from *Australian Centre from International Commercial Arbitration (ACICA)* and *Australian Maritime and Transport Arbitration Commission (AMTAC)*, Jo Delaney from *Chartered Institute of Arbitrators (CIArb)* and Mary Walker representing *Australian Dispute Resolution Association (ADRA)* and acting as an Observer for *Law Council of Australia (LCA)*.

## **Website:**

Mary facilitated the meeting where a discussion was held about how CADR as a facilitative body, would represent an agreed position between the groups given that it does not have any authority to impose a decision. At the time of the meeting the CADR website was not live but members were urged to look at the website to get an idea of the federated type nature that was hoped would evolve that would hopefully attract more groups. It was also suggested that a survey should be conducted to see if any prior groups had dropped out and to note on the website that CADR began as an ADRA initiative.

Mary clarified that ADRA was not formed at the time IFDR began and later became an invitee to the Industry Forum meetings. It was mentioned that the Industry Forum changed its name to CADR as a result of confusion arising between its acronym, IFDR, and FDRPs where new members were thinking it was a Family Law initiative. The name change to CADR also allowed for the more collaborative nature of the groups to be highlighted as a federative type union.

There was general consensus that the website looked good and that there was not much more to add. It was also agreed that approval from the listed organisations should be sought prior to the website going live and those that did not give their approval would be removed and re-added to the website once approval was received. It was therefore agreed that the CADR would seek and receive approval from the organisations referred to on its website prior to it going live.

## **Fees and Terms of Reference:**

Mary opened a discussion about fees where it was agreed that Council Member fees were to be set at AUD \$200/annum, Advisory Group Fees were AUD \$50 and Special Interest Groups were not to be charged any fees.

A discussion about the Terms of Reference was then held and it was agreed that the Terms could be revisited in the future but for now Mary endorsed the terms of reference on behalf of ADRA and added that the Terms of reference were to be suggested to the *Law Council of Australia (LCA)* in due course.

## **Advisory Groups:**

Discussion was then held about inviting *Academic, Research and Advisory Groups* to join CADR as groups such as the *Australian Dispute Resolution Research Network* were ADR-Focused academics who had not yet been approached. There was also discussion about inviting international groups such as *Asia Pacific Regional Arbitration Group (ARPRAG)* to join CADR but it was agreed that whilst there is an international agenda, Australian based issues would be dealt with as the primary focus. It was also agreed that not all groups would be involved in every issue but that there would be agreement amongst the groups about which members were relevant to assist on a needs-basis with a particular report.

## **Special Interest groups:**

It was agreed that special interest groups would only be called upon to assist with specific reports on a needs-only basis. For example, the involvement of *Indigenous Engagement Committee*, *the Justice Connect Indigenous Group* the *Public Advisory Indigenous Centre* and the *Refugee Advice and Casework Service (RACS)* could be contacted to offer pro bono advice when required. It was agreed to send a generic email to multiple groups/organisations of interest to see whether they would like to become CADR members for specific projects.

### **CADR Arrangements:**

It was agreed that the aim of CADR should be manageable in relation to its upcoming meetings which should be held quarterly - ie 4 meetings /year one of which is to be an in-person meeting and the other three via teleconference. Depending on the projects at hand, further meetings could be held as required by the specific projects in question. The motion was carried, and Mary thanked ADRA and ADC for the administrative support and funds with regards to the website and the administrative management. It was also agreed that the forthcoming fees from the member groups should go towards the sums used for the website.

### **Focus 2018/2019:**

The last topic of the day was around what members believed needed to be done in 2019 and the topic was raised about the *International Settlement Agreements Convention* otherwise known as the *Singapore Convention*. There was agreement that judicial education could occur in order to promote a uniform approach and a uniform understanding around the Convention message. This motion was carried as a project for 2019.

Mary then opened discussion on the topic of uniform branding with the hope that all member organisations of CADR could use the CADR logo on their respective websites across Australia. It was hoped that the development of a common language around mediation in Australia that would be used via the website would send a strong message especially in relation to the key messages presented by the *Singapore Convention*. ACICA agreed that it would put together the key messages of the *Singapore Convention* given that it was so closely involved with the Convention in 2018. Mary clarified that CADR was the project committee for the *Singapore Convention*, at least for the time being.

The 2018 meeting formally closed at 11.45 am AEST

### **2019- 2020: No Forum Day held.**

As a result of the international training in Mongolia, Spain and Portugal that ADRA assisted in 2019, there was no time left to engage in a further CADR conference in 2019. Given too the changes in RI with the CEO, Fiona Hollier, leaving and a new CEO, Amber Williams arriving it was considered best to wait until the Dispute resolution scene had settled in Sydney and that resulted in no conference being held in 2019.

In 2020, Australia was plagued by the COVID pandemic which resulted in a lockdown and no conferences being allowed person-to person for the first half of the year. In June 2020, ADRA contacted RI, ADC and Mary Walker to rejuvenate the Steering Committee and to that effect a teleconference was held on 17 July 2020 between those groups (Mary representing the Law

Council). It was decided at that meeting that RI would contact ADC to get a list of prior participants to invite to a half-day workshop via video-link on **14 May 2021**. Another teleconference was suggested before the proposed workshop but to date attempts to follow-through have not been successful given the difficulties all groups are currently facing with the COVID circumstances.

At this stage, ADRA will persevere with a follow-through teleconference so that the 6<sup>th</sup> CADR conference can successfully occur on 14 May 2021. It is hoped that this comprehensive history will rejuvenate interest for member organisations to meet again for this very worthwhile cause.

## Appendix

### TERMS OF REFERENCE FOR THE STEERING COMMITTEE OF IFDR:

1. The development of contact among all non-government DR Industry entities with a view to enabling those entities to develop and maintain lines of communication with one another on matters relating to;
  - a. Effective dispute management in all areas of the Australian community, economy and workplace.
  - b. The needs and activity of government in the DR field.
  - c. Common interests within the DR industry.
  
2. The development and utilization of a line of communication with government in pursuit of greater use of DR in the Australian community, economy and workplace.

**In pursuit of Terms of Reference 1 and 2 above, the Steering Group shall:**

- ▶ Encourage contact between DR industry entities on matters common to DR industry needs,
  
- ▶ Arrange a periodic forum of DR industry entities,
  
- ▶ Alert the industry of matters requiring submission to government encouraging or opposing government decision as needed, whether singly by entities or in concert.
  
- ▶ Manage a website which provides information to and acts as a means of contact among industry entities on matters relevant to these terms of reference.