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# Matters of Interest

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## AQ1 FROM INDUSTRY FORUM FOR DISPUTE RESOLUTION TO COUNCIL FOR ALTERNATE DISPUTE RESOLVERS (14 MAY 2014–25 AUGUST 2020)

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The purpose of this section is to remind those involved, especially the past members of the Steering Committee, about the history of Council for Alternate Dispute Resolvers (CADR) to date, and to hopefully rejuvenate their interest in this very worthy cause. This history takes us from the inception of CADR to the present day.

### THE BIRTH OF IFDR

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 Dispute Resolution (DR) community, occurring as it did, with no consultation of any kind between the Australian Government and any DR organisation. At the time, the Australian Dispute Resolution Association (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 organisations 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 DR 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)*, *Lawyers Engaged in Alternative Dispute Resolution (LEADR)*, *Australian International Dispute Centre (AIDC)*, *Australian Commercial Dispute Centre (ACDC)*, *Australian Centre for International Commercial Arbitration (ACICA)*, *Chartered Institute of Arbitrators Australia (CIArb 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. 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.

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## **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. Among 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 United Nations Commission on International Trade Law (UNCITRAL) rules have evolved for Arbitration. Lastly, 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 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 DR services on an international scale. 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, 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. 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 website 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 mediation 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 revisit these issues.

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## 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 that 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 reconsider 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 another type of entity either online or otherwise. Although no decision was made, the steering committee for 2016 was mindful of the evolving nature of the Forum and recognised the need for time to allow thoughts to germinate into action.

## 30 MAY 2017: FOURTH FORUM DAY

### Launch of the IFDR Website

The fourth 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 website 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 could 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 attended by Haley Jarick from RI, Deborah Lockhart from ADC, Deborah Tomkinson from ACICA and *Australian Maritime and Transport Arbitration Commission* (AMTAC), Jo Delaney from CIArb and Mary Walker representing ADRA and acting as an Observer for *Law Council of Australia*.

## Website

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 and 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. It was agreed that the CADR would seek and receive approval from the organisations referred to on its website prior to it going live.

It was clarified that ADRA was not formed at the time IFDR began and later became an invitee to the Industry Forum meetings. It was noted that the Industry Forum changed its name to CADR as a result of confusion arising between its acronym, IFDR, and Family Dispute Resolution Practitioners (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.

## 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 while 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 among 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 – that is four meetings per 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.

## Focus 2018/2019

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

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.

## 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 promote a further CADR conference in 2019. Given, too, the changes in RI

with 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. This 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 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 sixth 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 utilisation 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.