



**Community Justice Centres**  
Attorney General's  
department of nsw

NADRAC Secretariat  
Robert Garran Officer  
BARTON ACT 2600

14 May 2004

Dear Secretariat Members

I am pleased to provide the attached comments on the discussion paper, "WHO SAYS YOU'RE A MEDIATOR? Towards a National System for Accrediting Mediators" on behalf of Community Justice Centres of New South Wales.

Community Justice Centres (CJCs) is a business centre of the Attorney General's Department of New South Wales and operates under the Community Justice Centres Act (1983). The role of CJCs is to:

- provide good-practice mediation and conflict-management services; and
- transfer skills and knowledge in dealing with and resolving conflict to clients and communities.

The comments provided in the attached document are sourced from the CJCs Professional Reference Group, which consists of mediators and CJCs management.

I thank you for the opportunity to provide comment on this issue and welcome any further involvement resulting from the discussion paper. Please contact me on telephone number 9228-7451, or by email at [Deborah.Sharp@agd.nsw.gov.au](mailto:Deborah.Sharp@agd.nsw.gov.au). Alternatively, you can contact Andrew Windever, Manager Projects, on telephone number 9228-7452, or by email at [Andrew.Windever@agd.nsw.gov.au](mailto:Andrew.Windever@agd.nsw.gov.au) if you require any additional information.

Yours sincerely

Deborah Sharp  
Director



**Community Justice Centres**  
Attorney General's  
department of nsw

**National Alternative Dispute Resolution Advisory Council  
(NADRAC) Discussion Paper -**

**“WHO SAYS YOU’RE A MEDIATOR –  
Towards a National System for Accrediting  
Mediators”**

**Comments provided by the Community Justice Centres of NSW**

**May, 2004.**

## ***Introduction***

Community Justice Centres (CJCs) is a business centre of the Attorney General's Department of New South Wales and operates under the Community Justice Centres Act (1983). The role of CJCs is to:

- provide good-practice mediation and conflict-management services; and
- transfer skills and knowledge in dealing with and resolving conflict to clients and communities.

## ***Community Justice Centres- An overview***

CJCs provides a range of Alternative Dispute Resolution (ADR) Services across NSW. The services are free and accessible to all communities in NSW. CJCs services include: mediation; conflict management (large community based disputes that may require a number of intervention strategies); workplace disputes; facilitated meetings; and pre-mediation.

CJCs mediators are trained and accredited by CJCs and provide mediation services on a casual basis. They are Ministerial Appointees and they live across NSW. Consequently, they are available to provide a service in all parts of the state. CJCs provides services for neighbourhood disputes, Apprehended Personal Violence Orders (APVO), civil and small claims, some family matters, indeed any matters where the parties feel they are in dispute which does not involve violence or criminal matters. Referrals can be from an individual or a referring agency such as Local Courts, Police or Department of Housing.

CJCs operates on a regional model (four regions), with regional coordinators developing partnerships with key referrers at the local and regional level.

### **Sydney Region**

Ground Floor Civic Tower  
66-72 Rickard Road  
Bankstown 2200  
Ph: (02) 9790 0656  
Acting Co-ordinator Bruce Sellick

### **Northern Region**

Cnr Church and Bolton Sts  
Newcastle 2300  
Ph: (02) 4929 1211  
1800 990 777  
Co-ordinator Janet Sutherland

### **Southern Region**

2<sup>nd</sup> Floor Transport House  
1 Rawson Street  
Wollongong 2500  
Ph: (02) 4228 0433  
1800 650 987  
Co-ordinator Sarah Mills

### **Western Region**

Level 1, 311 High Street  
Penrith 2750  
Ph: (02) 4732 1933  
1800 252 736  
Co-ordinator Annie West

CJCs also has a policy and program **Directorate** located at:  
Level 8, 8-12 Chifley Square  
SYDNEY 2000  
Ph: (02) 9228 7459  
Director Deborah Sharp

## **Preamble**

Community Justice Centres of NSW acknowledges the aim of the discussion paper, *“Who Says You’re a Mediator? – Towards a National System for Accrediting Mediators”* is to obtain information and stimulate discussion leading up to a workshop on mediator accreditation at the 2004 Mediation Conference.

The discussion paper identifies numerous risks and problems with the current situation of mediator accreditation, which are acknowledged by CJsCs. In particular the issue of standards and competencies of mediator accreditation is a concern.

There are differing views about what is “necessary” or “acceptable” as training in the legal/commercial ADR field -v- community -v- family/relationship -v- workplace and industrial ADR. Issues of expertise, and knowledge/qualifications, in the likely content of a dispute get raised. For example, do former judges of commercial divisions of courts get asked to mediate because they are good mediators, or because it is a commercial dispute? Whether experts or advisors, or even agents, are allowed in mediation is also a factor, influencing party expectations of the mediator and maybe how the mediator sees their function.

The comments provided in this document are sourced from the CJsCs Professional Reference Group, which consists of mediators and CJsCs management.

## ***CJsCs and the mediation industry***

Since CJsCs was established over 20 years ago, the ADR industry has expanded and changed significantly. CJsCs is now one of many ADR services available to the community. This expansion is indicative of the positive impact of ADR services in the community and of CJsCs role in facilitating this recognition. While CJsCs shares objectives with other ADR services, fundamentally the breadth and depth of CJsCs service provision makes this service unique in NSW.

CJsCs is an accessible organisation for people in the community who want to become mediators. Rather than requiring tertiary qualifications as a prerequisite to selection, CJsCs’ focus is on reflecting the make-up and diversity of the whole community and providing training to ensure people from all communities can become mediators. Transference of skills in mediation occurs through turnover of mediator panels, which in turn ensures that CJsCs has a flexible and available workforce.

CJsCs has the added benefit of being a government organisation able to contribute to whole-of-government approaches to service delivery. Also, CJsCs has strong links with NGOs and local government services. CJsCs is pivotal because of its links to government, other ADR services and mediators.

Other states, namely Queensland and the Northern Territory, have modelled their services on CJC practice and process, particularly pre-mediation and mediation.

## ***CJCs Current Initiatives***

### ***Indigenous communities***

CJCs has identified an increase in the demand for mediation services from indigenous communities. Our experience, based on the recruitment of 15 indigenous mediators, shows this demand is increasing.

In the Northern region there has been a significant increase in the number of disputes mediated by CJCs where one or more of the parties is indigenous: 291 matters in the 10 months to April, 2004; compared with a total of 153 matters opened in the previous financial year ending June, 2003. This clearly demonstrates the positive response of indigenous groups to alternative dispute resolution involving indigenous mediators and highlights the need for CJCs' Aboriginal mediation services to be further expanded in other regions of NSW.

The issues around provision of services to indigenous communities are twofold. Firstly, the provision of direct client services and secondly, the way in which CJCs support and develop indigenous mediators and staff.

Feedback from direct client service provision has been very positive, with communities and referrers reporting long-term workability of agreements reached during CJCs intervention. Communities have also reported satisfaction with the process of reaching those outcomes.

Clients have also presented with different needs in terms of mediators. Some clients ask for indigenous mediators only and others are very specific about wanting non-indigenous mediators. For many more, who the person is and the cultural background of the mediator are more important.

The recruitment, training and on-going support of indigenous mediators has faced quite different challenges with different views: on the most appropriate form training should take; on the need for a separate service; on how the support network operates; and its membership. These needs and issues are distinctly different from the service provision issues and in many respects is the most challenging component of the indigenous mediation service.

A review of our current indigenous program has commenced.

### ***Culturally and linguistically diverse communities (CALD)***

CJCs currently provides services to anyone who requests it. Support such as interpreters is provided to all parties who need that support. Mediators are selected to reflect the demographics of the community in which they work.

Accessibility is one of the most important principles underpinning CJCs current program: the services are free; CJCs has expanded regionally and the service is now provided across NSW. CJCs promotes its work to community organisations and encourages people from all communities to make use of the service. Partnerships have also been formed with agencies such as the Department of Housing and the

Department of Community Services in order to provide a service to clients who may be more disadvantaged.

A community focus, links with non-government organisations, strong links with local courts and a free service all ensures disadvantaged groups have access to CJsCs service.

### ***Support for a national body***

CJsCs supports the establishment of a national body for accrediting mediators with strong support for the objectives of:

- enhancing the quality and ethics of mediation practice,
- protecting consumers of mediation services,
- building consumer confidence in mediation services, and
- building the capacity and coherence of the mediation field.

Agencies tend to want mediators to mediate according to their particular “model”. The establishment of a national body will be able to address the current risks and problems and allay many concerns. CJsCs sees the establishment of a national body as being desirable for maintaining a monitoring role, ensuring consistency in mediation practice and process. This national body can be likened to a professional institute with a focus on mediation practice, not geography of mediation services.

With a national body comes a “national framework” offering broader acknowledgement and recognition of mediation services as well as potential for political protection. This national body can be viewed as the peak organisation for accreditation. Whether it is intended or not, the national body is likely to reduce the number of less reliable or unscrupulous operators, or “cowboys” in the mediation industry.

Another positive outcome from the formation of a national body could be an increase in user confidence in the mediation process and practice resulting from incentives to use accredited organisations.

The accreditation process through a national body offers an opportunity for identifying and agreeing on commonality in processes. Core training can be identified with the potential for “add on” specialities to be made available to meet the needs of the diversity of conflicts and disputes experienced by consumers.

Accreditation can therefore be for a certain level or a certain package allowing organisations to appeal to a particular, or niche, market. The positive outcome from this approach is the engagement of a diverse range of mediators representative of the Australian community.

A coalition of accrediting agencies certainly provides potential for significant cost savings in mediation training. Cost savings can be achieved by reducing the need for mediators to undertake training for separate bodies before being selected as a mediator.

The emphasis on providing a mediation service rather than a focus on providing training can also benefit mediators. For some trained mediators there is a question of “where do I go now?” Having completed their training there is not always work available from the training organisation.

There is potential for the introduction of a “practicing certificate” in mediation with the establishment of a national body.

### ***Issues for consideration***

For CJs the establishment of a national body has the potential for alienation as a service provider given our community focus. It is extremely important community focused mediators without “qualifications” are incorporated into any national accreditation. This potential “disadvantage” is not insurmountable. CJs would not see this as a reason to not support the establishment of a national body as the advantages outweigh the potential disadvantages.

Likewise, it is extremely important national accreditation does not negatively impact on indigenous or culturally and linguistically diverse (CALD) communities. CJs recognises further discussion is required around indigenous and CALD mediators.

### ***The Structure of a National Body***

CJs favours a single national body as opposed to a federation of state bodies. A state-based structure potentially presents more risks and problems than currently exists.

A single national body created by “chapters” would support accreditation processes which share common elements as well as provide a system for various areas of practice: examples being a community organisation chapter; a legal/commercial chapter; or an industrial chapter.

A single national body can assist to identify core principles to further explore what mediation is and what mediators do. This can then become the basis of national accreditation.

The membership of the national body can be organisation based. However, there does need to be a mechanism for consumer group input.

We see the structure as an evolving entity. Consequently, the structure needs to allow sufficient flexibility to include the involvement of different chapters and initially, at least, it should be simple.

### ***Funding the national body***

Initially, government seed funding is favoured in order to further explore the proposal. Government seed funding provides an opportunity to examine and test the appropriate structure of a national body as well as exploring accreditation processes.

Ultimately, the national body could establish a secretariat and become incorporated. Funding could then be by way of membership fees and a fee for service for accreditation of new organisations.

### ***Conclusion***

Community Justice Centres of NSW supports NADRAC's preliminary proposal for a national system for accrediting mediators. In particular, CJsCs supports:

- the formation of a single national body
- the structure of this body to be created by chapters
- membership for mediation organisations
- the funding of this body by way of government seed funding
- further discussion on an appropriate name for the organisation.

CJsCs supports NADRAC's commitment to open, inclusive processes aligned with quality and diversity of mediators and we strongly agree further discussion is required around mediator accreditation.

This support is measured by the reflections contained in the body of this response to the discussion paper.

### **ATTACHMENTS:**

- CJC Policy and Procedures on Mediator Accreditation
- Mediator Competencies
- CJsCs Annual Reports available from our website – [www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)