



Submission No. ADR/13S
Received 20/6/08
Law Reform Committee

20 June 2008

The Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring St
EAST MELBOURNE VIC 3002

Dear Ms Riseley,

Alternative Dispute Resolution

In December 2007, representatives of the Victorian Bar delivered its submission and made oral submissions on ADR to the Committee.

I write to you now, to update the Committee on changes to the regulation of ADR nationally, and the Victorian Bar's position on that change.

In its written and oral submissions to the Committee last year, Victorian Bar opposed the introduction of the National Mediator Accreditation System (NMAS) then being supported by the National Alternative Dispute Resolution Advisory Committee (NADRAC), the body which advises the Commonwealth Government on ADR.

Since then, NADRAC has overseen the introduction of the NMAS, which is to operate on an 'opt-in' basis until 2010.

The Victorian Bar still questions the necessity to introduce global regulation of ADR for those already regulated in the conduct of the professional practice in which they act as mediators – as all legal practitioners are. However, in view of support for the NMAS in the Supreme Court of Victoria and in the Federal Court of Australia, the Bar has chosen to commit to the NMAS and to 'opt-in'.

With effect from 1 February 2008, the Victorian Bar has been a Recognised Mediator Accreditation Body (RMAB). As part of that commitment, with effect from 1 July 2008, the Victorian Bar's previous Mediator Accreditation Scheme will come to an end. From that date, the base level of mediator accreditation by the Victorian Bar will be accreditation as a Mediator under the NMAS.

The Victorian Bar commenced accreditation under the NMAS on 1 April 2008 and has to date accredited in excess of 150 barristers under the NMAS.

The Parliamentary Committee may be interested to know that a number of other RMAB's and other professional bodies nationally have applauded the Victorian Bar's advanced progress under the NMAS and have indicated their intention to model their approach on ours.

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It appears now that most major professional bodies involved in mediation are participating in the NMAS. For example, at a national level, the Law Council of Australia (of which all Australian Independent Bars and Law Societies are constituent bodies) is represented on the National Mediator Accreditation Committee, as are, from Victoria, the Victorian Bar and the Law Institute of Victoria.

The NMAS includes not only Approval Standards governing the accreditation of mediators, but also Practice Standards governing mediation practice. While this is, for the moment, on an "opt-in" basis, it does, for all intents and purposes cover the field because the key professional organisations have, in fact, opted in.

Whatever form the NADRAC-proposed national regulatory body in 2010 takes, it is, in our strong submission, neither appropriate nor feasible for the Victorian Government to introduce now any other form of ADR regulation covering mediation.

Should the Committee find it useful, the Victorian Bar would be happy to attend before the Committee to expand on, and answer any questions Committee Members may have about, the matters set out above.

The Victorian Bar has reflected upon other matters addressed in its submissions on the reach and use of ADR mechanisms, and I anticipate providing you with another short supplementary submission shortly.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter Riordan', written in a cursive style.

PETER RIORDAN
Chairman
Victorian Bar Council