

Ms Serena Beresford-Wylie  
Director  
NADRAC Secretariat  
Robert Garran Offices  
3-5 National Circuit  
BARTON ACT 2600

By email to [nadrac@ag.gov.au](mailto:nadrac@ag.gov.au)

20th April 2010

Dear Ms Beresford-Wylie,

**Re: Key National Principles for Resolution of Disputes**

**About National Legal Aid**

National Legal Aid (NLA) represents the Directors of the eight State and Territory Legal Aid Commissions (commissions) in Australia. The commissions are independent statutory authorities established under respective State or Territory enabling legislation. They are funded by State or Territory and Commonwealth governments to provide legal assistance to disadvantaged people.

**NLA feedback - general**

NLA is pleased to see the emphasis on justice and social inclusion in the "statement of key national principles". Particularly in light of this emphasis, we suggest that the principles need to specifically and more fully refer to:

- the need for risk assessment and management in all cases as appropriate to the matter (taking into account violence and the risk of harm);
- the availability of support, legal advice and assistance in appropriate cases.

**NLA Feedback - issues raised in "Key National Principles for Resolution of Disputes - Explanatory Document" March 2010**

**1. Title**

NLA suggests that the document would be better titled: "**Australian National Principles for Resolution of Disputes**". While the word "key" may be considered a useful amplification, this word is probably redundant as the word "principle" denotes a primary or general law from which others are derived.

## 2. The content and expression of the Key National Principles

### Ordering of Principles

NLA suggests that the two proposed categories of principles might be better expressed as:

1. Taking Responsibility, Genuine Steps & Appropriate Dispute Resolution;
2. Information, Support, Legal Assistance & Use of Court Processes.

NLA also proposes that the principles be re-ordered as follows:

1. The first 2 principles would remain with suggested amendments under the first category (Taking Responsibility etc);
2. The additional 5 principles with amendments would relate to the second category (Information, Support etc).

### Content and Expression of Principles

NLA proposes that the original principle 5 be removed as this principle is effectively covered by the principles relating to community understanding and to practitioners meeting standards.

NLA respectfully suggests that the wording of the principles could be more succinct so as to be more immediately comprehensible.

NLA specifically proposes that a new principle be included with the following wording to address concerns about risk assessment not being carried out and power imbalances not being appropriately addressed (particularly relating to violence or risk of harm):

***“dispute resolution practitioners conduct risk assessment and management appropriate to the particular service and participants before and during dispute resolution”***

Enclosed for your consideration please find two alternative suggested redrafts of the principles:

1. Australian National Principles for Resolution of Disputes (closer to the existing wording but with a reordering of the principles and with some rewording);
2. Australian National Principles for Resolution of Disputes (more succinct version).

NLA does not consider that the principles, as redrafted with the inclusion of risk assessment and management, and with the promotion of the availability of legal assistance where appropriate, are incompatible with the obligations of

our stakeholders. However, without the amendments, we consider the principles would be incompatible with our responsibilities to our clients to that extent.

### **3. Dissemination of Key National Principles**

It will be important that the Australian National Principles for Resolution of Disputes are widely promulgated through government agencies and websites, and through legal assistance services and other support services.

Commissions have a strong focus on prevention and early intervention services, including community legal education, telephone and face to face legal information and advice, and referral services, and legally assisted dispute resolution. Commissions would actively disseminate the Australian National Principles through our websites, publications, community legal education sessions, telephone and face-to-face information and advice sessions (subject to considering the final version of the principles).

NLA is of the view that the promulgation of overarching dispute resolution principles together with appropriate legislative amendments over time will continue to foster and promote the resolution of disputes at an early stage, where appropriate. NLA continues to support strongly these developments.

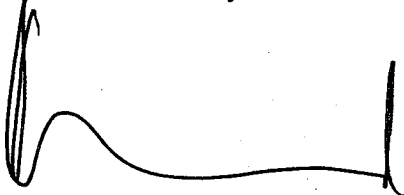
### **4. Other Issues**

NLA also considers that ADR continues to be significantly under-utilised as referred to in NADRAC's Explanatory Document. Each commission is keen to continue to explore with government bodies the expansion of appropriate and legally assisted dispute resolution processes in each of the civil jurisdictions within Australia.

### **Conclusion**

NLA thanks you for the opportunity to provide these comments. Please do not hesitate to contact us if you require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Alan Kirkland', with a stylized, flowing script.

Alan Kirkland  
Chair

# **Australian National Principles for Resolution of Disputes**

Australian society, government and the community are encouraged to adopt these principles for the appropriate resolution of disputes so that justice in society and social inclusion are advanced more effectively.

## **Taking Responsibility, Genuine Steps & Appropriate Dispute Resolution**

All people in dispute are encouraged and, where appropriate, will be assisted:

1. to take responsibility for their dispute and to take genuine steps to resolve or narrow the issues in dispute before court or tribunal proceedings are started;
2. to continually consider, and where appropriate participate in, alternative dispute resolution processes to resolve or narrow the issues in dispute before and at all stages of the court or tribunal process.

## **Information, Support, Legal Assistance & Use of Court Processes**

All participants in the dispute resolution system will use their best endeavours to ensure that:

3. people in dispute obtain information, and where appropriate support and legal assistance, necessary to enable them to choose and participate effectively in the most suitable dispute resolution process for their dispute;
4. the community understands, and is confident in, the available dispute resolution services, including through the promotion of consistent use of dispute resolution terms which make clear what each dispute resolution service and process offers;
5. dispute resolution services and practitioners conduct risk assessment and management appropriate to the particular service and participants before and during dispute resolution;
6. dispute resolution services and practitioners meet standards sufficient to protect the users of dispute resolution services from harm and to provide an effective and valued service;
7. court and tribunal hearings are primarily reserved, and readily available, for those cases that cannot be resolved justly or safely in any other way or in which there is a significant public interest in their being determined by a judge or tribunal member in a public venue.

# **Australian National Principles for Resolution of Disputes**

Australian society, government and the community are encouraged to adopt these principles for the appropriate resolution of disputes so that justice in society and social inclusion are advanced more effectively.

## **Taking Responsibility & Genuine Steps**

All people in dispute are encouraged to:

1. take responsibility for, and take genuine steps to resolve, issues in dispute;
2. consider, and participate in, appropriate dispute resolution processes to resolve disputes before court proceedings are started.

## **Information, Legal Assistance & Use of Court Processes**

All participants in the dispute resolution system are encouraged to ensure that:

3. people receive information and, where appropriate legal assistance, so that they can participate effectively in the most suitable dispute resolution process;
4. consistent dispute resolution terms are used and the community understands what each available dispute resolution service offers;
5. dispute resolution services and practitioners conduct risk assessment and management appropriate to the particular service and participants before and during dispute resolution;
6. dispute resolution practitioners meet standards sufficient to provide an effective and valued service;
7. courts and tribunals are primarily reserved for cases that cannot be resolved justly or safely outside court or where there is a significant public interest in a court decision.