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Australian National Mediator  
Accreditation System

Report on Project

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## Introduction

Achieving a National Mediator Accreditation System has been a project that has taken many years within Australia. It has taken the concerted efforts of industry based organisations, professional membership groups, government and non government agencies, educators, researchers, consumers and mediators to design a system that can be responsive to the divergent field that is described as mediation.

Mediation is now used within Australia almost everywhere there is conflict. For example, it can be used to deal with conflict that arises in communities, families, workplaces, hospitals, and in respect of consumer issues. It can be used to resolve conflict in the corporate sector as well as large scale environmental conflict. It has been used to resolve conflicts over construction and over refugee rights. In short, mediation is now used wherever there is conflict and conflict is ubiquitous.

Mediation is also used where there is no conflict, but rather a need to make decisions about the future which can involve analysing interests and assessing alternatives. Increasingly, mediation is used as an adjunct to sound decision making in respect of complex issues that require focused conversation.

Mediators are drawn from every professional field. Mediators can have an original discipline based in law, medicine, business, social science or the arts, or may be unrelated to any discipline. Mediators may also be drawn from every culture and region of Australia. They can be Vietnamese, African, Indigenous and many mediators adapt practice to suit the need of the particular culture in which they are operating.

The multidisciplinary nature of mediation means that mediators are diverse in terms of backgrounds, education, culture and approach. There are also different approaches to mediation. A mediation process can take hours, days or even years (for example, in complex native title mediation). Mediators may be full time, part time, local, regional, national or international.

These differences mean that the creation of a National Mediation Accreditation System has necessarily been a difficult task. However, there are also many similarities amongst mediators. For example, mediators are passionate about what they do and the difference that it can make in peoples lives.

Most mediators agree that they want a National Accreditation System and most also agree on the content of that National Mediation System.

## The Process

The National Mediation Accreditation Project (the Project) commenced following a grant from the Commonwealth Attorney-General. The central project task was to develop a Framework and documentation to guide the implementation of the National Mediator Accreditation System. The Project was premised on, and intended to further, the Proposal adopted at the National Mediation Conference ('NMC') held in Hobart in May 2006. That proposal had been the subject of extensive consultations and the topic of Mediator

Accreditation had been the subject of numerous reports prior to that time. The topic of mediator accreditation has been the subject of reports, meetings and proposals for more than a decade. The Proposal at the National Mediation Conference was preceded by considerable activity in 2004 when NADRAC published and consulted on the paper "So who wants to be a Mediator." The 2006 proposal which articulated minimum training and competency standards received widespread support and was the subject of consensus agreement.

The tasks in this Project were to:

- Review the National Mediator Accreditation System that was unanimously endorsed at the 8<sup>th</sup> National Mediation Conference in Hobart (as contained in the Report to the Conference of May 2006 – at Appendix E);
- Consider the work done to date by the NMC Implementation Committee and Subcommittees;
- In consultation with the reference group and, as appropriate, other representatives of the mediation sector, draft a framework to guide the implementation of the National Mediator Accreditation System including:
  - final accreditation requirements (see Appendix F)
  - uniform practice standards (see Appendix F)
  - a plan for the establishment of a funded implementation body (see Appendix F)
  - a plan to deal with the proposed functions of the implementation body in advance of its full establishment/funding (for example, for the recognition of mediator accreditation bodies, a national register of accredited mediators, development of final continuing professional development requirements and dealing with mediator appeals about de-accreditation) (see Appendix F);
- Provide a brief report to WADRA, the NMC and the Commonwealth Attorney-General's Department on the outcomes of the consultations with the reference group/mediation sector on the draft framework (this Report); and
- Provide a brief final report to WADRA, the NMC and the Commonwealth Attorney-General's Department setting out the further steps to be taken by the NMC to implement the National Mediator Accreditation System (see Appendix F and also the stand-alone Commentary on Standards documents – Part Two of this Report).

The Project initially involved the preparation of Draft Approval Standards and Draft Practice Standards. These documents were prepared in June 2007 and were amended following input from the WADRA Working Group and the Reference Group set up for the Project. Details of the WADRA Working Group membership and the Reference Group membership are located at Appendix A.

In drafting the Standards, the work that had been done by the National Mediation Committee and subcommittees was closely considered. These committees had set out a number of practical implementation plans and had specifically considered such matters as promotion and funding. The work of the committees included some draft work in respect of subject areas that could be relevant in terms of the Practice Standards. In addition, the work that had

been approved at the National Mediation Conference in 2006 and had been led by Professor Boule was adopted with minimal variation but with the addition material (as had been envisaged in 2006).

On 9 July 2007, the Draft Standards documents were released for consultation. On 14 July they were circulated at a NADRAC Research Forum held in Melbourne (a list of attendees is located at Appendix B). The revised documents were posted on the WADRA website and were circulated to WADRA Reference Group members. In addition, an invitation to contribute was circulated to LEADR, IAMA and other relevant stakeholders.

Invitations to attend Practitioner Consultation Forums were also posted on the web and sent out to any who expressed interest as well as IAMA and LEADR. These forums were held on the following dates, in the following cities:

- Melbourne, 27 July 2007
- Brisbane, 3 August 2007
- Sydney, 7 August 2007
- Adelaide, 22 August 2007,
- Perth, 23 August 2007

A total of 100 mediators and other interested representatives attended the Forums. A list of all attendees is located in Appendix B. In addition more than 100 mediators attended the NADRAC Research Forum where the draft Standards were also circulated.

The Project team thanks all of those who attended forums held around Australia. Their contributions have been invaluable in shaping and refining the voluntary scheme.

In addition, interested parties were invited to arrange meetings with Professor Sourdin, discuss matters by phone or lodge written submissions. Separate meetings were held with the Law Society of New South Wales as well as representatives of IAMA, LEADR, the Law Council of Australia, ACDC and the Chartered Institute of Arbitrators to discuss practical implementation issues.

Written submissions were also lodged by a range of interested groups and parties. A list of those who lodged submissions is located at Appendix C. A summary of some of the primary submissions issues is embedded in the revised Standards Commentary documents.

## The Outcomes

Generally, most who were engaged in consultations and who made submissions were supportive of the proposed system and the draft Standards. A number of those consulted made editorial suggestions in relation to the draft Standards. Most of these suggestions have been incorporated into the revised Standards that are annexed to this Report.

Many of those who made written and oral comments were very positive about the Scheme. Several of the submissions received made positive comments in relation to the implementation of accreditation standards in general. Professional bodies such as LEADR, the Law Society of NSW, IAMA, and VADR expressed strong support for the scheme, with both VADR and IAMA applauding the initiative to establish 'quality control' within the industry and LEADR stating that Standards were 'the practical way forward'. The DSCV also

supported of the Scheme, stating that it supported the creation of ‘nationally recognised minimum standards for mediators and ADR providers’.

Individual practitioners also provided much positive feedback: L. Stephen described the draft Standards as ‘flexible, inclusive and comprehensive’, while N. Ciffolilli simply stated that the Standards ‘are excellent’. Other practitioners advocated for the implementation of standards which were ‘long overdue’, or simply welcomed the Standards as ‘a huge step forward’. One practitioner, M. Fajerman, provided support for the Standards by suggesting that the industry ‘should be at the forefront with the development of standards under which we want to practice.’

The future framework document was also well received with almost all participants commenting favourably. The only substantive additions to this document related to the representation issues where two national bodies (the Law Council of Australia and ACDC), who do not have direct membership, requesting a voice on the proposed National Mediator Accreditation Committee.

There were, however, some substantial issues raised by some of those who represented mediators from the legal profession. Some of these views can be summarised as follows:

1. Standards should not be required for legal mediators; existing standards already apply.
2. Commercial mediators have different needs to family mediators and the Standards are too ‘family focused.’
3. Government should not adopt the Standards as a requirement for mediators; the scheme should be a voluntary accreditation scheme.
4. Compliance with the Standards could add cost and inconvenience.

In relation to the first two points, the Standards have been amended where possible to ensure that these views and differences are represented. In one sense, it is not surprising that the original formulation relied in part upon developments in the family sector – this sector has developed Standards more rapidly than any other. Also the original formulation of the Standards had drawn upon work previously formulated in this area.<sup>1</sup>

In respect of the third point, this is essentially a matter for government and policy makers.

In relation to the fourth point, a great deal of attention has been paid to how the existing industry accreditation systems can be integrated into the national approach. All leading training bodies consider that although the new Standards may slightly increase mediator training requirements in some courses, in many cases the existing training requirements are higher. In any event, all training bodies who made contact in the course of the Project considered that the Standards are achievable.

In terms of RMAB status and work required of a RMAB, the response has also been positive although some sectors of the legal sector again had specific concerns. These concerns have been recognised wherever possible, in the amended Standards documents. For example, in respect of complaints handling systems, it is clear that many of the existing legal services

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<sup>1</sup> See T.Sourdin, T.Fisher and L. Moloney, *Towards a Quality Framework (Literature Review and Research Report)*, La Trobe University 2004.

complaints handling bodies do not comply with Australian Standards or Industry Benchmarks in respect of complaint handling. As a result, a separate requirement has been added to the Standards to deal with complaints schemes that have been set up under legislation and which otherwise would have been non compliant with the Mediator Accreditation Standards.

## Differing Views

Some marked differences in the approaches of individual and sector representatives were apparent. One of the major differences related to training. In this regard, some of those that made comments or provided submissions suggested that the training required of mediators should be at University level – equivalent to 150 hours or more of face to face contact and with supervised clinical practice requirements. At the other end of the training debate, was the suggestion that the training should be at the level of a ‘24’ hour course. In relation to this matter it seems that, despite the wide divergence in views, many mediators considered that the training originally agreed upon in the Boule Report was satisfactory although almost all considered that 40 hours (now 38) was an absolute minimum.

There are also differences in terms of particular sector interests. For example, the views of the legal sector differed sometimes on a jurisdictional basis, such as, where the use of an agreement to enter into mediation is more prevalent (and may be required) in some schemes (for example, in New South Wales solicitor-mediators will tend to use an Agreement to Enter into Mediation) but is not prevalent in some other schemes. For example, barristers in Victoria who may operate pursuant to statutory referral may not necessarily use an Agreement to Enter into Mediation.

The differences in relation to terminology were also significant. Most submissions and most of those who attended meetings considered that ‘standards’ should be developed. However a few submissions suggested that ‘guidelines’ were more appropriate.

In this regard it is clear and has previously been noted that the current regulation of mediation in Australia is marked by a degree of fragmentation, duplication and confusion. This reflects the disparate nature of practice, and the fact that the application of mediation in disputes is a relatively recent and as such, is undergoing rapid evolution. As noted previously, mediation is not ‘owned’ by a particular profession, but the field draws its practitioners from a number of disciplines, each of which may be regulated by its own professional association or by specially set up associations. Further, there is an expanding range of mediation models of practice and a lack of clarity concerning the precise definition of those modalities in different settings. The fact that there is no national peak body of mediators has also been cited as a reason for the piecemeal development of standards to date.<sup>2</sup>

Existing mechanisms take a number of different forms and have been developed by a diverse range of bodies. They include statutory regulation at both the federal and state level, government funding criteria, codes of practice, ethics and conduct standards developed by professional associations and training organisations, and the internal policy documents of

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<sup>2</sup> T Sourdin, (2005) *Alternative Dispute Resolution*, Law Book Company, p. 178.



individual community and other organisations. They contain provisions that overlap at some points and are inconsistent in application and scope at others. There is no uniform, comprehensive system of credentialing practitioners, enforcing standards or developing quality improvement strategies. Participants in mediation processes do not have access to a standard complaints procedure nor do mediators to standards relating to confidentiality, impartiality or to ethical requirements.

Standards and guidelines have also been set by a number of peak bodies. The Law Council of Australia, which is a national professional body for lawyers, Australian Law Societies, Institutes and Bar Associations, have produced a voluntary, basic codes of conduct such as 'Ethical Standards for Mediators'.<sup>3</sup> This Code provides a very general ethical and practical framework for the practice of all types of mediation (as defined in the standard). As a guideline, the Code plays an educative function only for individuals, organisations and institutions involved in mediation. Its efficacy, therefore, depends on the extent to which it is adopted by mediators, members and other bodies.

The majority of the provisions in the guidelines refer to ethical issues such as impartiality, conflict of interest and confidentiality. It also contains a general requirement that mediators have a level of competency that would satisfy the reasonable expectations of parties. Parties are entitled to be informed about the mediator's knowledge and skills. Obligations in respect of publicity and advertising are also covered, including disclosure of fees.

Individual state law societies have also developed their own standards, for example, the Law Institute of Victoria's *Code of Practice* and the Law Society of New South Wales' guidelines. Many legal practitioners also obtain 'specialist accreditation' which may be conferred after attendance and assessment requirements are met (for example in both New South Wales and Victoria, a practitioner may obtain specialist accreditation as a mediator).

Leading Edge Dispute Resolvers (LEADR)<sup>4</sup>, an Australasian, non-profit organisation, has developed a scheme for the accreditation of mediators (1998), and a set of rules for mediators which means it can accredit mediators through its own training and accreditation process on a user pays basis. LEADR accreditation is one benchmark for the industry. LEADR is accredited under the *Mediation Act 1997* in the ACT and has incorporated the Law Council's 'Ethical Standards for Mediators' into its standards.

LEADR panel membership is based on meeting a standard, which includes training criteria as well as experience-based qualifications, together with an assessment by a LEADR panel via videotape. There are also ongoing professional development requirements to remain accredited. The LEADR committee also has the discretion to remove a member's accreditation, in unspecified circumstances.

The Institute of Arbitrators and Mediators Australia (IAMA) also has an accreditation scheme that involves assessment and certain pre requisites in terms of training. IAMA's scheme is interlinked to its arbitration accreditation program in that there is provision for referral and also provision for accreditation and panel membership.

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<sup>3</sup> See <[http://www.strategic-resolution.com/documents/mediators\\_ethical\\_standards.pdf](http://www.strategic-resolution.com/documents/mediators_ethical_standards.pdf)> (Accessed 13 September 2006).

<sup>4</sup> See <<http://www.leadr.com.au>> (Accessed 13 September 2007)

One of the most extensive and specific review of appropriate standards in the dispute resolution sector was undertaken by the National Alternative Dispute Resolution Advisory Council (NADRAC); at the same time as the Family Pathways inquiry. Although applicable to ADR processes generally, its 2001 report to the Commonwealth Attorney-General, "A Framework for ADR Standards", was an important step towards the development of quality standards in the area of family law mediation.

The NADRAC report examined a range of possible standards models applicable to both individual practitioners and organisations. It contains a useful discussion of the various options, including codes, benchmarks, agreements, models and exemplars and suggests the development of standards in relation to education, training, assessment and selection, supervision, professional development and discipline. NADRAC recommended a code of practice as the appropriate framework and sets out, in broad terms, the essential elements of such a code.

One of the recommendations was for self-regulation rather than enforcing compliance through more direct regulation, or leaving it to market forces. The report stressed the need for an effective complaints mechanism, based on accepted standards with access to an independent second tier for review or further dispute resolution services, perhaps in the form of an ADR ombudsman.

The selection processes for accreditation, it is argued, should be fair and transparent and based on assessment of knowledge, skills and ethical requirements. Under the preferred NADRAC model, practitioner competence would be measured by nationally accepted assessment standards and incorporate a lifelong learning approach.

The NADRAC report contained a useful set of questions for establishing what may be an appropriate standard or code in a particular context. In the mediation context these could include:

- the needs to be addressed in developing the standards;
- appropriateness of existing or comparable standards;
- the roles and responsibilities of service providers and practitioners;
- standards for service providers;
- standards for practitioners; and
- review and evaluation of standards.

A new accreditation system for family dispute resolution practitioners is being developed following changes to the *Family Law Act 1975* (Cth). The stated purposes of the accreditation system is to 'ensure the provision of high quality dispute resolution services, and to recognise the professionalism of the sector'.<sup>5</sup> Regulation 83 of the *Family Law Regulations 1984* (Cth) provides for minimum standards of education, training and experience to satisfy the requirements for accreditation. Since 1 July 2007, any practitioners wishing to be accredited under the scheme are required to meet the new standards. The accreditation requirements will be fully implemented by 1 July 2009, with interim arrangements in place for current practitioners during the transition period.

The proposal outlined in this framework which is comprised of Approval Standards, Practice Standards and the 'Moving Forward' proposal is intended to respond to these important

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<sup>5</sup> See <http://www.ag.gov.au/fdrproviders> (Accessed 18 September 2007).

considerations and changes, accommodate diversity, be flexible, unrestrictive, and be the subject of ongoing review. Essentially, the framework is to be regarded as a 'living document' that can respond to changes in practice into the future. The standards of practice, in particular, are intended to include minimum (core) requirements for continuous improvement.

It has been noted that in fields of work such as mediation '... we will never find one perfect, elegant solution to questions of quality assurance and accountability'.<sup>6</sup> Nevertheless, the complex and serious nature of mediation tasks and the nature of conflict within which practitioners work demand quality practice and clear mechanisms for accountability. Thus, in recent years, there have been increasing attempts '... at codifying what effective mediators should do and what they should know',<sup>7</sup> and there seems to be a general trend in this direction. Certainly, as remarked by the consultant for a major report in the USA '... recent developments indicate that credentialing mediators in the name of promoting quality and protecting consumers is clearly a growth industry'.<sup>8</sup> However, the task is not simple, for in addition to the difficulties of definition, assessment and monitoring, various industry stakeholders may have mutually incompatible interests.<sup>9</sup>

### What are Standards?

NADRAC provides a useful working definition of 'standards', in turn, as '... rules, principles, criteria or models by which quality, effectiveness and compliance can be measured or evaluated'.<sup>10</sup>

NADRAC also notes that standards can be expressed in a variety of ways, including: codes of practice, benchmarks, guidelines, models, exemplars, service charters, credentials, competencies and capabilities, as well as criteria for approval, certification, selection, endorsement or accreditation.<sup>11</sup>

Standards already developed for mediation in other jurisdictions most commonly use a Code of Practice or a Code of Ethics. For the purposes of this report, the term Standards has been adopted to include a reference to a Code of Practice and a Code of Ethics.<sup>12</sup> Guidelines for practice are also evident in some jurisdictions, and often contain any certification processes and requirements. A Code of Practice can be described as '... a set of rules... which are designed to control behaviour, products or services within a particular industry or area of activity' (NADRAC).<sup>13</sup> The descriptor of 'standards' has been used rather than 'code' as this descriptor appears to be more prevalent within Australia. An ethical code enables

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<sup>6</sup> M Herrman, N Hollett, D Goettler Eaker, J Gale & M Foster 'Supporting Accountability in the Field of Mediation', *Negotiation Journal*, Vol 18, No 1, January 2002, p 30.

<sup>7</sup> M Herrman, N Hollett, D Goettler Eaker, J Gale & M Foster 'Supporting Accountability in the Field of Mediation', *Negotiation Journal*, Vol 18, No 1, January 2002, p 31.

<sup>8</sup> C Pou, *Mediator Quality Assurance: A Report to the Maryland Mediator Quality Assurance Oversight Committee*, Feb 2002, p 1.

<sup>9</sup> R Pipkin and J Rifkin, 'The Social Organization in Alternative Dispute Resolution: Implications for Professionalization of Mediation', *The Justice System Journal* 9:2 (1984), pp 222-24.

<sup>10</sup> National Alternative Dispute Resolution Advisory Council, *Report to the Commonwealth Attorney-General: A Framework for ADR Standards*, April 2001, p. 10.

<sup>11</sup> National Alternative Dispute Resolution Advisory Council, *Report to the Commonwealth Attorney-General: A Framework for ADR Standards*, April 2001, p. 10.

<sup>12</sup> This approach was taken by NADRAC..

<sup>13</sup> NADRAC, National Alternative Dispute Resolution Advisory Council, *Report to the Commonwealth Attorney-General: A Framework for ADR Standards*, April 2001, p. 10.

practitioners to get a sense of their basic commitments as professionals and offers them an understanding of the elements that must be weighed in making difficult decisions.<sup>14</sup>

Core concepts of consistency, quality and public protection are central to the development of Standards. Interestingly, some of the very strengths of mediation make such concepts difficult to test. The fact that mediation processes are informed, confidential and flexible in application, and, are interest rather than rights-based, make them difficult to monitor and provide opportunities for abuse by unscrupulous operators. As one analyst has noted

The absence of any structure of procedural or substantive rules, in a process conducted without direct public scrutiny, presents the real danger of harm from inept or unethical practitioners ... [I]n mediation much more than in other dispute resolution processes, the quality of the process depends heavily on the quality of the practitioner.<sup>15</sup>

Standards consultant, Charles Pou, similarly observes, the '... characteristics that make mediation useful – its privacy, flexibility, and an atmosphere that encourages openness – can give rise to abuse ...'.<sup>16</sup>

Although existing standards have commonality in their stated rationales, there are different emphases, often relating to the type of organisation that has produced the standard. A fairly typical list of reasons is given by the California Dispute Resolution Council (CDRC), a state-wide organisation of mediators, arbitrators and other neutral dispute resolvers. The CDRC Standards of Practice for California Mediators were developed in 2000 in collaboration with all the major dispute resolution organisations and individuals throughout the State of California, for the following stated purposes:

- to provide model standards of conduct
- to inspire excellence in practice
- to guide mediation participants, educators, policymakers, courts, government organisations and others in establishing policies and practices for mediation programs
- to provide a foundation for any mediation credentialing program that may be contemplated by specifying conduct that helps to define ethical, competent, appropriate and effective dispute resolution
- to promote public understanding and confidence in mediation.<sup>17</sup>

Standards developed by organisations, such as the United Kingdom College of Family Mediators (UKCFM),<sup>18</sup> that have a registration or certification focus also typically include professional accountability as a purpose. In addition, as a professional body, the UKCFM also includes professional development and professional support as integral to their standards. The American ADR umbrella organisation, the Association for Conflict Resolution (ACR),

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<sup>14</sup> H Astor & C Chinkin *Dispute Resolution in Australia* Butterworths 1992, p. 31 at p. 226, citing Schneider.

<sup>15</sup> R Baruch Bush, *The Dilemmas of Mediation Practice: A Study of Ethical Dilemmas and Policy Implications* (National Institute for Dispute Resolution, Washington D.C., c 1992), p. 3.

<sup>16</sup> C Pou, *Mediator Quality Assurance: A Report to the Maryland Mediator Quality Assurance Oversight Committee*, Feb 2002, p. 4.

<sup>17</sup> <<http://www.cdrc.net>> (Accessed 13 September 2007)

<sup>18</sup> <<http://www.ukcfm.co.uk>> (Accessed 13 September 2007)

refers to its Standards of Practice for Family and Divorce Mediation, adopted in April 2002, more simply as being a guide for the conduct of members.<sup>19</sup>

Judicial bodies may have further agendas. For example, the Ontario Family Courts have an accredited roster of mediators and cite “access to mediators” alongside quality control as the stated purposes of this arrangement.<sup>20</sup> Rather than simply promoting public understanding of mediation, the Florida Rules for Certified and Court-Appointed Mediators<sup>21</sup> aim – by their inclusion of a requirement of ‘good moral character’ – to protect participants in mediation and the public.

In some contexts, uniformity is a driving force. The peak Canadian national body, Family Mediation Canada, states that the purpose of its Practice, Certification and Training Standards is to create ‘national uniform standards that apply in relation to family mediation across Canada.’<sup>22</sup> The USA’s *Uniform Mediation Act* (2001), states that its primary purpose is to create a standard, nationwide framework for protecting the confidentiality of mediation communications and creating more certainty for participants in the process.<sup>23</sup>

In terms of the feedback received and the movement within Australian jurisdictions, it is clear that many consider that the time has come for ‘standards’ rather than ‘guidelines’ to be developed. The original NMC proposal related to a “Code of Conduct” but it is clear that the majority consensus is to develop and have clear Standards. The developed Approval and Practice Standards respond to this view.

## Practical Implementation

In terms of the practical implementation of the system, views were sought from practitioners, potential RMABs and stakeholders. Many who were consulted indicated that it was essential that there was some ‘overarching’ framework that could assist to ensure that the Accreditation system could continue to develop and to ensure that RMABs were supported.

The ‘framework’ document was developed to assist to create this overarching structure. In this regard many who were consulted considered that devising a plan to deal with the functions of an implementation body was premature until such a body had been established and supported – at least in terms of its initial set up and development. These issues are specifically addressed below.

In terms of the impact on practicing mediators, most of those who commented on the proposed Standards were positive and indicated that they could comply with Standards provides that the Standards were simple to use and there was little additional cost in terms of time or money in complying with the Standards. The Standards were further simplified following feedback in the consultation phase of the Project.

In terms of the impact on RMABs, specific consultations were held with potential RMAB bodies. These consultations led to the development of revised Standards and a shift to enable

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<sup>19</sup> <<http://www.acrnet.org>> (Accessed 13 September 2007)

<sup>20</sup> <<http://www.attorneygeneral.jus.gov.on.ca>> (Accessed 13 September 2007)

<sup>21</sup> <<http://www.flcourts.org>> (Accessed 13 September 2007)

<sup>22</sup> <<http://www.fmc.ca>> (Accessed 13 September 2007)

<sup>23</sup> See <<http://www.nccusl.org>> (Accessed 13 September 2007)

RMABs to exercise discretion in terms of what could be considered when initial mediator accreditation applications were made.

The Standards documents were also 'tested' in terms of international application. The developments in terms of National Mediator Accreditation Standards have been received with much interest and enthusiasm from international groups such as the International Mediation Institute (IMI) who has indicated that the Standards will be used as a template in the International sector. This is important for Australian Mediators who are likely to work across boundaries and who may work across jurisdictions.

## Future Issues and Implementation

The Framework document which was widely supported proposed that in order to maintain and further develop the national mediator accreditation scheme the role of Recognised Mediator Accreditation bodies be clarified and that a National Mediator Accreditation Committee be set up to establish an implementation body. This proposal was accepted and supported by all those who provided input into the project.

It is clear that the implementation of the Scheme and the ongoing development of the Standards require that an implementation body, that can assist to ensure that the Standards and scheme operate in an effective, efficient, satisfactory and fair manner be established.

### The Role of Recognised Mediator Accreditation Bodies (RMABs)

The National Mediator Scheme that was settled in 2006 suggested that the accreditation component of the scheme would be operated by Recognised Mediator Accreditation bodies (RMABs). The Standards set out the characteristics of these bodies and also set out the requirements of mediators and the obligations of RMABs. RMABs may include existing mediation and Alternative Dispute Resolution organisations and may also include new organisations, courts and tribunals, service provider bodies (government funded or not) as well as existing bodies such as LEADR, IAMA, Law Societies and Bar Associations as well as other professional bodies who comply with RMAB recognition requirements.

At present the Standards indicate that the RMAB process will involve 'self recognition' rather than the recognition of a body by another overarching implementation body.

The National Mediator Scheme also provides for an implementation period where RMABs (which are self recognised) have an ongoing role in Standards development and the definition and any extension of the recognition process into the future.

### An Implementation Body

An implementation body that will commence operations in 2008 and is comprised of representative members of RMABs, training and education providers, consumers of ADR services (community, government and business) will play a core role in:

- Developing and reviewing the operation of the Standards
- Developing a National Register
- Monitoring, auditing and supporting complaints handling processes
- Promoting mediation.

In addition the implementation body might also consider that RMAB recognition will involve external rather than self recognition and may also enable a more cohesive certification system and/ or consider more advanced certification systems into the future. The issue of more advanced certification has been raised in consultations with emergent international mediator certification bodies and may become a more prominent issue into the future.

In April 2006 at the National Mediation Conference, work had commenced in respect of an implementation body. However this work was hampered by geographical distance issues as well as significant resourcing, work and planning issues.

In the framework document (that was circulated as part of this Project) it was suggested that an implementation body will not be effectively created – particularly in the absence of clear RMAB selection - unless the implementation body work is initially supported and fostered by a body such as NADRAC. This approach was supported in all consultations and in submissions.

NADRAC's role with the Implementation body will be to facilitate meetings of a committee and to provide resources to assist to ensure such meetings operate effectively. Such resourcing would include NADRAC providing a venue or sourcing a venue, assisting to set an agenda, providing facilitation services during meetings, circulating draft and final minutes and action items as well as circulating correspondence and other relevant information to support the meeting process.

**NADRAC will facilitate four meetings of a National Mediator Accreditation Committee in 2008 and 2009 with the view to creating an independent and functioning National Mediator Standards body by 2010.**

**The created National Mediator Standards body will need to have an appropriate:**

- 1. constitution**
- 2. funding**
- 3. structure.**

**The Committee that is to commence operations in 2008 will also be able to:**

- 1. amend standards,**
- 2. develop standards**
- 3. consider additional RMAB recognition requirements**
- 4. promote mediation.**

**The Committee may also be responsible for keeping a national register of mediators voluntarily accredited under the Scheme and/or the maintenance of an RMAB register.**

The National Mediator Accreditation Committee (2008 – 2010)

There are issues about who would be involved in any National Mediator Accreditation Committee. The National Mediator Scheme approved in May 2006 envisaged a broad representative membership. It is clear that it is intended to have representatives of RMABs as well as other representatives.

Following consultation undertaken as part of this Project, it was agreed that a National Mediator Accreditation Committee would operate for a period of two years and that the members of that committee will be responsible for the set up of the National Mediator Accreditation body which will operate from 2010.

Members of the Committee will be required to attend the four NADRAC facilitated meetings to be held in March 2008 (Canberra), September 2008 (Perth, prior to the National Mediation Conference) and in May and October of 2009 at their own cost at a venue to be provided by NADRAC. The Committee will be comprised of individuals and representatives of bodies who are prepared to expend time and energy to create a workable and fully functioning body. Those who work on the committee will be required to attend all meetings and perform additional work outside meetings to ensure that standards operate effectively and that the national accreditation Scheme works into the future and adapts to meet the needs of the field and the needs of consumers of mediation services.

Clearly, committee members will need to 'walk the talk' and be prepared to openly engage in conversations about how the field can develop in an effective and coherent manner into the future.

**The membership of the National Mediator Accreditation Committee (2008 – 2010) will be open to the following and NADRAC be responsible for settling the Committee membership:**

- 1. One representative of any RMAB. If the RMAB has more than 100 mediators accredited under the Scheme it shall be entitled to have two representatives attend.**
- 2. One representative of each education and training provider that provides training as set out in the Approval Standards to no less than 50 participants per year.**
- 3. One representative from any professional organisation that is not an RMAB and has at least 30 accredited mediator members or is a national representative organisation that has RMABs as its members.**
- 4. One representative from any community or State based mediation service located in each State or Territory that is not an RMAB.**
- 5. One Commonwealth government representative (not from an RMAB) and one government representative from each State and Territory (not from an RMAB).**
- 6. Two representatives from business who have had regular and direct contact with mediation services and who are not mediators.**



## Appendices

### Appendix A

#### WADRA National Mediators Standards Accreditation Reference Group

<b>WADRA National Mediator Accreditation Subcommittee</b>	Ms Margaret Halsmith	Halsmith Consulting
	Mr Scott Ellis	Dispute Resolution Consultant
	Ms Jennifer Low	
	Mr Laurie James	Kott Gunning Lawyers
	Ms Lynn Stephen	Community Mediation Service, Bunbury, WA

<b>Implementation Committee</b>	Ms Helen Marks	Department of Defence, ACT
	Mr Scott Pettersson	PublishingPla.net
	Mr Terry Austin	Far North Queensland Dispute Resolution Centre, QLD
	Ms Sandra Boyle	School of Law, Murdoch University
	Ms Salli Browning	Dispute Resolution Consultant
	Ms Karen Dey	Community Justice Centre, NT
	Mr Bill Field	
	Associate Professor Angela O'Brien	School of Culture and Communication, University of Melbourne
	Ms Franca Petrone	School of Law, University of South Australia
	Mr Bill Pritchard	Community Justice Centre, NSW
	Mr Warwick Soden	Federal Court of Australia, Victoria
	Ms Mary Walker	Barrister
	<b>Mediator Practitioner bodies</b>	Ms Fiona Hollier
Mr Gordon Tippet		CEO, Institute of Arbitrators and Mediators, Australia
Ms Emma Matthews		Acting CEO, Australian Commercial Disputes Centre
<b>University</b>	Professor Laurence Boulle	School of Law, Bond University, QLD
<b>Community Justice</b>	Teresa Zarella	Dispute Settlement Centre, Victoria
<b>Industry</b>	Michael Leathes	IMI
<b>Trillium Training</b>	Mr Steve Lancken	The Trillium Group
<b>National Alternative Dispute Resolution Advisory Council</b>	The Hon. Justice Kellam	Supreme Court, Victoria

International input

#### International Mediation Institute:

Michael Leathes, Professor Nadja Alexander, The University of Queensland.

## Appendix B

### **Attendees, Practitioner Forums: National Mediator Accreditation Standards**

#### **Melbourne: 27 July 2007**

Di Bretherton  
Sam Hardy  
Susan Miles  
Carole Grace  
Pat Marshall  
Paul Gratton-Watson  
Sally Wiencke  
Danielle Lundberg  
Dave Rackham  
Ruth Richter  
Peter Condliffe  
Robyn Roberson  
Robert Turner  
Nicholas Calleja  
Mary-Louise Brien  
Danny Crossman  
Alan Wein  
Russell Bancroft  
Penny Webster  
Antony Nolan  
Mirek Fajerman  
Alikki Vernon  
Tim McFarlane

#### **Brisbane: 3 August 2007**

Nigel Amphlett  
Phil Scott  
Bernadette Kasten  
Andrea Tunjic  
Caryn Cridland  
Toby Boys

**Sydney: 7 August 2007**

Bruce Burgess  
Rosemary Mackenzie  
Philip Argy  
Fiona Hollier  
Ann Fieldhouse  
John Uri  
Janice McLeary  
Lynora Brooke  
Anna Quilter  
Ian Irring  
Maryln Scott  
David Lieberman  
Ashley Limbury  
Victor Berger  
Peter Rosier  
Anne Sutherland-Kelly  
Paul Lewis  
Micheline Dewdney  
David McGrane  
Paula Castle  
Michelle Brenner  
David Hogst  
Lorraine Lopich  
Robert Lopich  
John McGruther  
Naomi Holtring  
Ross MacDonald  
Jane Houston  
Athena Harris Ingall  
Steve Lancken  
Garry McIlwaing  
Val Sinclair  
Gerald Raftesath  
Geri Ettinger  
Garth Brown

**Adelaide: 22 August 2007**

Sylvia Huie  
Jim MacDonalds  
Lee Arbon  
Chris Jefferys  
Franca Petrone  
Lucy Turonek  
Greg Rooney  
Darren McGeachie  
Dale Bagshaw  
Sanoy Policansky  
Diana Buratto

**Perth: 23 August 2007**

Margaret Dixon  
Noray Jones  
Jenny Sullivan  
Simon Dixon  
Sandra Boyle  
Derek Fisher  
Barbara Kwiecien  
Julie Mercer  
Chris Stevenson  
Archie Zariski  
Mark Proud  
Margaret Halsmith  
Nicoletta Ciffolilli  
Jill Howieson  
John MacTsaac  
Scott Ellis  
Barry Tonkin  
Michael Hollingdale  
Elizabeth Stanley  
Kim Doherty  
Steve Lieblich  
Kerrie Harms  
Keith Chapman  
Mandy Flahavin  
Max Lewington

## Appendix C

### **Submissions**

Alan Limbury  
Alan Wein  
Australian Commercial Dispute Centre Ltd  
Bill Lemass  
Christopher Stevenson  
Danny Crossman  
Dispute Resolution Centre, Legal Aid, Western Australia  
Dispute Settlement Centre Victoria  
Federal Court of Australia  
Gerald Raftesath  
Institute for Arbitrators and Mediators Australia  
Law Council of Australia  
Law Institute of Victoria  
Law Society of New South Wales  
LEADR  
Lynn Stephen  
Marek Fajerman  
Micheline Dewdney  
National Dispute Resolution Network / Community Justice Forum  
Nicola Ciffolilli  
Pat Marshall  
Queensland Law Society  
Transformative Mediation Interest Group  
Val Sinclair  
Victorian Association for Dispute Resolution  
Victorian Bar Council  
Wollongong Mediators Forum

Appendix D

**Attendees, NADRAC Research Forum, La Trobe University, 14-15 July 2007**

<b>Title</b>	<b>First Name</b>	<b>Surname</b>	<b>Position</b>	<b>Organisation</b>
Mr	Daniel	Abraham	Assistant Director- Indigenous Policy	Attorney-Generals Department
Ms	Josephine	Akee	Member	NADRAC
Ms	Lola	Akin Ojelabi	Associate Lecturer	La Trobe University
Associate Professor	Anne	Ardagh	Associate Professor Law	Charles Sturt University
Ms	Josephine	Armstrong	Post Separation Practitioner Family Dispute Resolution	Centacare SA
Professor	Hilary	Astor	Professor of Dispute Resolution	Sydney University
Mr	Habibu	Atib	PhD student	Victoria University
Mr	Dale	Bagshaw	Director Mediation Centre	University of South Australia
Ms	Catherine	Barker	Graduate	Attorney-General's Department Canberra
Ms	Becky	Batagol	Lecturer	Monash University
Dr	Emilia	Bellucci	Lecturer	Victoria University
Ms	Serena	Beresford-Wylie	Director	NADRAC
Dr	Andrew	Bickerdike	Manager Research and Training	Relationships Australia
Professor	Laurence	Boulle		Bond University
Ms	Allison	Bruce	Family Dispute Resolution Practitioner	Upper Murray Family Care
Ms	Lynn	Buchanan	Conciliator	Health Services Commissioner
Ms	Kate	Buchanan	Research Officer	Victorian Parliament Law Reform Committee
Ms	Amber	Cassidy	Card fraud officer	Victoria Teachers Credit Union
Ms	Subha	Chandar	PhD student	Victoria University
Mr	Terry	Cleal	Conciliation Officer	ACCS
Ms	Clare	Coburn	Associate Lecturer	La Trobe University
Ms	Jenna	Condon	Student	La Trobe University
Ms	Melissa	Conley Tyler	Senior Fellow	University of Melbourne
Mr	Andrew	Crocker	Legal Officer	NADRAC
Ms	Naomi	Cukier	Learning and Development Adviser	Various
Ms	Nicole	Cullen	Director	Financial Services Complaints Pty Ltd

<b>Title</b>	<b>First Name</b>	<b>Surname</b>	<b>Position</b>	<b>Organisation</b>
Ms	Lynn	Cummings	Family Dispute Resolution Practitioner	Relationships Australia
Mr	Simon	Curran	Manager of Services	Relationships South Australia
Mr	Jim	Cyngler	Mediator	
		Dennis-		
Ms	Symoneta	Kouzmin	FDRP	Relationships Australia
Ms	Micheline	Dewdney	Consultant/Practitioner and Trainer	Micheline Dewdney & Associates
Mr	Donovan	Jacka	Educator/Organiser	ACTU
Ms	Kathy	Douglas	Lecturer	RMIT
Ms	Susan	Douglas	Lecturer	University of the Sunshine Coast
Ms	Paule	Eckhaus	Senior Mediator and Conciliator	Relationships Australia VIC
Ms	Rhonda	Emonson	Manager/ FDR Practitioner	Upper Murray Family Care
Ms	Sandra	Fenton	PhD student	La Trobe University
Ms	Rachael	Field	Senior Lecturer	Queensland University of Technology
Mr	George	Filipowicz	Dispute Resolution Practitioner	RAV Sunshine Family Relationship Centre
Mr	Allan	Findlay	DR Program Development Officer	Legal Aid Queensland
Ms	Mandy	Flahavin	Manager	Relationships Australia WA
Mr	Spencer	Flint		Dispute Mediation Services Australia
Ms	Deanna	Foong		Dispute Settlement Centre of Victoria
Ms	Glenice	Fox	SJD Candidate	Monash University
Ms	Dianne	Gibson	Director Child Dispute Services	Family Court of Australia
Mr	Ian	Govey	Member	NADRAC
Mr	Greg	Hansen	Member	NADRAC
Dr	Samantha	Hardy	Senior Lecturer	La Trobe University
Ms	Norah	Hartnett	Member	NADRAC
Mr	James	Hartnett	Ombudsman	Public Transport Ombudsman
Ms	Pam	Hemphill	Senior Adviser Child Dispute Services	Family Court of Australia
Ms	Kathryn	Heuer		Law Council of Australia
Ms	Astrid	Horter	Family Dispute Resolution Practitioner	Family Mediation Centre
Ms	Jill	Howieson	Law Lecturer	University of Western Australia
Ms	Kate	Hyson		Attorney-General's Department Canberra
Ms	Katherine	Johnson	Barrister and Psychologist	Unillegal Consulting Pty Ltd

<b>Title</b>	<b>First Name</b>	<b>Surname</b>	<b>Position</b>	<b>Organisation</b>
Ms	Anita	Kaminski	Conciliation Officer	ACCS
Ms	Ilana	Katz	Manager Child Dispute Services	Family Court of Australia
The Hon Justice	Murray	Kellam AO	Chairperson Parenting Advisor with Family Relationships Advice Line	NADRAC
Ms	Connie	Kellett		Centrelink
Ms	Sue	Kennedy		Office of the Health Services Commissioner
Ms	Anna	Lee Cribb	Commissioner	Australian Industrial Relations Commission
Ms	Margaret	Lothian	Principal Mediator	Victorian Civil and Administrative Tribunal
Ms	Deborah	Macfarlane	PhD student	Victoria University
Professor	Kathy	Mack		Flinders University
Ms	Merrin	Mackay	Legal Officer	Supreme Court of Tasmania
Ms	Carol	Makhoul	Family Dispute Resolution Practitioner	Sunshine Family Relationship Centre
Ms	Lorrelle	Mandaru	Inspector	ITSA
Ms	Carolyn	Manning	Principal Mediator	Carolyn Manning Consulting Services
Ms	Patricia	Marshall	Lecturer	The University of Melbourne
Ms	Emma	Matthews	Acting CEO	Australian Commercial Disputes Centre
Mr	Mark	McPherson	Senior Conciliator	Health Services Commissioner
Mr	Derek	Minus	Mediator/Barrister	Mediation and Arbitration Chambers
Ms	Caroline	Morgan	Senior Policy Officer	Legal Services Commissioner
Ms	Jacinta	Morphett	Policy Research Officer	Victorian Law Reform Commission
Mr	Paul	Myers	Director, Alternative Dispute Resolution Strategy	Department of Justice
Mr	Tim	O'Neil	Inspector	ITSA
Ms	Jenny	Ong	Family Dispute Resolution Practitioner	Family Relationships Centre, Relationships Australia
Mr	Michael	Piotrowicz	Senior Legal Officer	Attorney-General's Department Canberra
Mr	David	Rackham		Essential Mediation
Ms	Natalie	Ralph	PHD Candidate	Deakin University
Ms	Christine	Ralph		Self Employed
Ms	Ruba	Rashid	Project Officer	NADRAC
Ms	Ruth	Richter		Essential Mediation
Ms	Kerryn	Riseley	Executive Officer	Law Reform Committee



<b>Title</b>	<b>First Name</b>	<b>Surname</b>	<b>Position</b>	<b>Organisation</b>
Ms	Robyn	Roberson	ADR Practioner	Department of Defence
Mr	Matthew	Ross	Operations Manager	The Mediation Room
Ms	Olivia	Rundle	LLM ( Research) Candidate	University of Tasmania
Ms	Jennifer	Scott	Director	ScottADR
Mrs	Marilyn	Scott	Senior Lecturer	University of Technology Sydney
Ms	Michelle	Scott		Federal Magistrates Court
Dr	Gaye	Sculthorpe	Member	NADRAC
Ms	Judith	Sharples	Divisional Manager	Victoria Legal Aid
Ms	Ena	Shaw	Dispute Resolution Training Assistant Dean - Learning and Teaching, Faculty of Law	Relationships Australia VIC
Ms	Melinda	Shirley		Queensland University of Technology
Ms	Rosa	Silvestro	Dispute Resolution Co-ordinator	Federal Magistrates Court
Mr	Soden	Warwick	Member	NADRAC
Ms	Tania	Sourdin	Conflict Resolution Centre	La Trobe University
Ms	Katrina	Spyrides	Executive Officer	Conflict Resolution Service
Ms	Lynn	Stephen	Member	NADRAC
Ms	Lilia	Szarski	FRC Practice and QA Manager	Relationships Australia
Mr	Gordon	Tippett	CEO	The Institute of Arbitrators and Mediators
Mr	Stephen	Tregonning		Dispute Settlement Centre of Victoria
Mr	Todd	Trevaks		Office of the Small Business Commissioner
Professor	Bernadine	Van Gramberg	Head, School of Management	Victoria University
Ms	Alikki	Vernon	Lecturer	La Trobe University
Mr	Andrew	Vincent	PHD Candidate	Victoria University
Ms	Penny	Webster		University of Melbourne
Ms	Diane	Winset	Conciliation Officer	ACCS
Mr	Max	Wright	Acting Practice Leader (Family Dispute Resolution)	Relationships Australia

Appendix E

**Report to the 8<sup>th</sup> National Mediation Conference in Hobart in May 2006  
on the National Mediator Accreditation System**

*No mediator is an island*

*Celebrating difference – Learning from each other*

# Mediator Accreditation in Australia

**Report to**

**The 8<sup>th</sup> National Mediation Conference**

**Hobart, Tasmania**

**3-5 May 2006**

# Mediator Accreditation in Australia

## Report and Proposal of Facilitator and Committee to the 8<sup>th</sup> National Mediation Conference, Hobart, 3-5 May 2006<sup>1</sup>

### Key Terms Used in the Report and Proposal

*Committee* – the representative group appointed by the National Mediation Conference Ltd to supervise the Accreditation initiative.

*Draft Standard* – the original proposal on mediator accreditation developed by the facilitator and committee – see

<http://www.mediationconference.com.au/html/Accreditation.html#draft/>

*System* – the proposed system for national uniform mediator accreditation.

*National Mediator Standard (NMS)* – the instrument setting out the knowledge, skills and ethical understanding required for Accreditation in terms of the System.

*Uniform Code of Practice* – the Code of Practice which will apply to those accredited to the NMS.

*Recognised Mediator Accreditation Bodies (RMABs)* – the organisations which are recognised as being able to Accredite individual mediators in terms of the System.

*National Register of Mediators* – the authoritative record of those Accredited to the NMS.

*Implementation Body* – the interim body responsible for the initial implementation of the System.

### Background

There has been considerable debate in Australia during the last 15 years over issues of accreditation, training, standards, codes of conduct and professional organisations for mediators. The debate has been conducted in the literature, at conferences and consultations, within policy-advisory bodies such as NADRAC, in commission reports, and in numerous other contexts.<sup>2</sup> Some of the debate in Australia, and in other countries, is referred to in the Draft Standard on mediator accreditation.

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<sup>1</sup> The members of the committee are Helen Marks, Scott Pettersson, Franca Petrona, Sandra Boyle, Warwick Soden, Mary Walker, Karen Dey, Salli Browning, Gordon Tippet, Robert Crick and Bill Field and the facilitator is Laurence Boule.

<sup>2</sup> There is an extensive literature from many different countries on all aspects dealt with in this report and proposal – for specific references see the Draft Standard.

A national uniform system of mediator accreditation could have the following objectives: the improvement of mediator knowledge, skills and ethical standards; the promotion of standards and quality in mediation practice; the protection of the needs of consumers of mediation services and the provision of accountability where they are not met; the conferment of external recognition of mediators for their skills and expertise; the development of consistency and mutual recognition of mediator training, assessment and accreditation ;and a broadening of the credibility and public acceptance of Australian mediation and mediators, here and abroad.

This report and proposal are presented against the background of the Draft Standard, the written submissions made in response to it, the public consultation forums conducted in Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth and Darwin, the feedback responses and documentation from the public meetings, the facilitator's report on the consultations, and the directions and deliberations of the organising committee. The report and proposal have been made available prior to the Conference to the Attorney-General's Department which provided funding for the accreditation initiative.

At the end of most of the public consultation sessions participants were asked to indicate by a show of hands whether the Draft Standard had sufficient merit in principle to be taken to the next phase – the support at the various forums for the broad parameters of the proposal was between 90% and 100%. A general positive sense of the need to move forward was expressed.<sup>3</sup> There was enthusiasm from those who saw the initiative as enhancing the status of mediation, as improving consumer protection, as keeping up with developments abroad, and as giving mediators added legitimacy in promoting their services within and outside the country. There was also an expectation of a possible buy-in to a new system by governments, courts, tribunals, industry bodies and professional associations, which would in turn increase its attractiveness to individual mediators.

The main concerns and reservations expressed in the submissions and at the consultative forums revolved around the potential costs that a national uniform accreditation system might entail, fears of exclusivity and exclusion, concerns that it could become bureaucratic and operate in the interests of larger organisations, and an apprehension that it might in effect become a licensing system. There were also concerns about turf wars, over-professionalisation and the emergence of a two-tiered system involving, on one hand, mediators who were accredited in terms of a national uniform system and, on the other, those who were not.

Views expressed in the submissions, forums and feedback sheets are captured in the evidence available on the web-site (<http://www.mediationconference.com.au/html/Accreditation.html>) and this report does not repeat or elaborate on them. In the light of the history and background of the initiative the facilitator and Committee will present the Proposal contained in this document to participants at the Conference as embodying the perceived consensus of those members of the mediation community who participated in the process, with alternative options where these are regarded as important. The committee strongly

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<sup>3</sup> The feedback sheets from the public consultations include comments such as, 'We need to get started on this ...', 'We can talk forever but if we don't get something started...', 'Get on with doing it... stop discussing...', 'Do not wait until the crisis as with other unregulated activities ...'.

recommends the main elements of the proposal to the Conference and the alternative options are included to reflect other views which surfaced in the consultation process.

### **The Role of the National Mediation Conference**

The 8<sup>th</sup> National Mediation Conference in Hobart is both part of the accreditation consultation process and an occasion for the mediation community to move the initiative to the next phase. Despite the absence of constitutional or legal authority, participants at the conference can make recommendations about the future of a national uniform system of mediator accreditation. They can make a recommendation:

- (i) to move to an implementation phase of such a system;
- (ii) to continue the consultation process; or
- (iii) to abandon the concept entirely.

The Committee which has had the conduct of the initiative strongly recommends option (i) to the Conference, namely that the proposal be endorsed fully or in part and that decisions be taken to move to an implementation phase as set out in the Proposal.

As the Conference has no formal status as a deliberative body there are no specific rules of decision-making. The Committee and facilitator recommend that the first session of the Conference be used to impart information on the proposal and to respond to questions, and that the final session be used for participants to express their views on the proposal as a whole, and on specific features which require attention. Where specific issues cannot be resolved on the floor of the conference the Committee recommends that interim or short-term measures be agreed to in order to assist in getting things started, with these to be reviewed in the intermediate- or longer-term in the light of practical experience in the system.

### **Alignment with other systems**

The proposal for a national uniform system of mediator accreditation is not mutually exclusive of other forms of accreditation. In the immediate term it would sit alongside existing systems, but in the short term it could become the benchmark in the industry. Consideration can be given at the Conference as to how the new system aligns with such initiatives as the standards and requirements of the Industry Skills Council, the Australian Compliance Institute, the Australian Quality Framework, the Cert IV in Mediation, the regulation of Registered Training Organisations, the new family mediator requirements and the emerging workplace relations dispute resolution system. . If the system proposed here moves forward quickly it may itself be a source of influence on other systems, or may be adopted by them. It is proposed in terms of its own merits and not as an exclusive or competitive system vis-à-vis other comparable systems. Unlike other systems it would provide consistency, uniformity and transportability in mediator standards and accreditation across the diversity of mediation systems.

### **Explanation and promotion of the new system**

While it is not part of the Proposal, the Committee recommends to the Conference that consideration be given to ways in which a new system can be explained to and promoted among interested individuals and organisations. It will be to the benefit of the mediation movement to have it adequately explained and promoted to government, courts and tribunals, industry bodies and mediation organisations. Participants at the conference are invited to give attention to this factor.

# The Proposal

## **The participants at the 8th National Mediation Conference, Hobart, 2006**

### **Noting:**

- a. The views expressed at the 7th National Mediation Conference, Darwin, 2004, about a national uniform mediator accreditation system;<sup>4</sup>
- b. The submissions made and the views expressed during the accreditation consultation process between December 2005 and May 2006;
- c. In particular the frequently expressed desire to enhance the standards of mediation practice, to improve the status of mediators, to have greater mutual recognition across different mediation sectors, and to promote the confidence and protection of consumers, without affecting innovative and creative practice;
- d. The preference for a national uniform system of mediator accreditation to be based on self-regulation by the mediation community, operating on a devolved basis through relevant existing organisations, without direct state regulation or formal legal status;
- e. The desire to remain ahead, or abreast, of comparable occupations and professions, and comparable developments for mediators abroad;
- f. The need for an initial national uniform accreditation system to be relatively basic, simple, inexpensive and easy to implement, and to be built on the foundations of existing mediation organisations and mediator experience;
- g. The desirability of an initial national uniform accreditation system having the in-built capacity for evaluation, review and adaptation over time in terms of changing needs and policies;
- h. The need for mediator accreditation to be regarded as legitimate by interested parties, to cater for diversity in mediation practice, for it to involve collaboration across mediation sectors, and to have transparency in all aspects of the system;

And further recognising that the National Mediation Conference has no legal or constitutional authority in this regard, but as a gathering of members of the mediation field it can make recommendations and provide direction in relation to a uniform national accreditation system;

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<sup>4</sup> The terms 'mediation' and 'mediator' are understood in terms of the NADRAC definition of the process – see NADRAC, *ADR Terminology* (2002). See also the NADRAC paper 'Who Says You're a Mediator? Towards a national system for accrediting mediators' (2004).



## Hereby recommends that:

### I The System

1. There will be a National Mediator Accreditation System (the System) which allows Australian mediators who satisfy the specified requirements to be Accredited to the National Mediation Standard (NMS).
2. The System will be voluntary for those mediators who wish to obtain Accreditation to the NMS and there will be no compulsion for mediators to obtain this Accreditation in order to practice.<sup>5</sup>
3. The System will apply only to mediators and not to other dispute resolution practitioners.<sup>6</sup>
4. There will initially be one level of Accreditation in the System (Accredited to the National Mediation Standard), with advanced or specialised forms of accreditation to be considered later.
5. There will be a National Register of Mediators for those Accredited to the National Mediator Standard.<sup>7</sup>

### II The National Mediation Standard and Code of Practice

1. Accreditation will take place in terms of the requirements of a National Mediator Standard (NMS) and a uniform Code of Practice.
2. The National Mediator Standard enumerates and describes the knowledge, process competencies, skills and techniques required for Accreditation to the System – see Annexure A.
3. The Code of Practice describes the ethical and professional obligations of mediators Accredited to the National Mediator Standard. It will be developed by the Implementation Body in the light of existing Australian mediator Codes of Practice.

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<sup>5</sup> This distinguishes the System from a licensing arrangement in terms of which accreditation is a mandatory pre-requisite to the practice of an occupation or profession.

<sup>6</sup> This is the current proposal, which may change over time.

<sup>7</sup> The designation *Accredited in terms of the National Mediation Standard* could be registered as a trademark to ensure its exclusivity.

### III Recognised Mediator Accreditation Bodies

1. The System will be based on and be operated by those mediation and ADR organisations which are identified for this purpose as Recognised Mediator Accreditation Bodies (RMABs).<sup>8</sup>
2. RMABs will be those bodies whose capacities and credentials as set out in Annexure B have been recognised by the Implementation Body as being compliant with the requirements of the System.<sup>9</sup>
3. The main function of the RMABs will be to Accredite mediators to the NMS.
4. RMABs can provide education and training programs themselves or can use the education and training services of other institutions as part of their Accreditation procedures.<sup>10</sup> Where the education and training services of outside bodies are used the ultimate assessment for Accreditation will be made by the relevant RMAB.
5. Recognition of RMABs in terms of the requirements of the System will be given for the implementation phase of the System.
6. RMABs will provide information on those whom they Accredite in terms of the System to the Implementation Body to assist it to maintain the Register of Mediators Accredited to the NMS.

### IV Accreditation of Mediators in terms of the NMS

1. RMABs will provide certification to the effect that an individual has satisfied the criteria for Accreditation according to the National Mediator Standard.
2. In order to be certified by an RMAB, mediators must be persons who are fit and proper to practice as mediators and have attended an education, training

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<sup>8</sup> A 'peak body' was not recommended in the Draft Standard and there was insufficient support for the concept in the consultation process for it to be recommended here. Such a body may emerge after the development of a national uniform mediator accreditation system.

<sup>9</sup> It is envisaged that a wide assortment of bodies should be able to attain recognition as RMABs. The following categories of bodies might wish to become RMABs:  
Membership Associations (such as LEADR, IAMA);  
Service-providers, (such as Community Justice Programs, Relationships Australia, ACDC, Centacare, Australian Department of Defence, Retail Tenancies agencies);  
Professional associations (such as Law Societies, Australian Association of Social Workers, APS College of Counselling Psychologists);  
Courts and Tribunals (such as the Federal Court of Australia, the National Native Title Tribunal and the Victorian Civil and Administrative Tribunal);  
Not-for-profit associations (such as VADRA, ADRA, WADRA).  
Universities and other educational institutions.

<sup>10</sup> It is likely that in the early years of the System most RMABs will provide their own education and training.

and assessment course which complies with the requirements listed in Annexure C.<sup>11</sup>

3. Education and training will be provided in the discretion of RMABs, either themselves or through other education and training organisations. RMABs will have the discretion as to who enters accreditation programs, on whether the education and training is continuous or in stages, and on whether assessment takes place directly after education and training or after a period of delay.

*Alternative option:* That in order to avoid perceived conflicts of interest, there be a separation between training and accreditation institutions, along the lines of those professions where universities undertake the education and professional bodies the accreditation; such an arrangement would require time to organise the practical and financial aspects.

4. Individual RMABs, service-providers and other organisations will be able to build on the national standard by providing additional advanced or specialised forms of accreditation for mediators external to the proposed system.

## V Association with RMABs

1. Mediators Accredited to the National Mediation Standard will be required to be members or associate members of an RMAB, or have an association with an RMAB, on an ongoing basis, or have an employment relationship with an RMAB
2. RMABs will have discretion in relation to categories of membership, associate membership or other associations for mediators Accredited to the NMS.
3. The membership or association referred to in this section will serve as a basis for keeping current the National Register of Accredited Mediators, for managing complaints and disciplinary proceedings against mediators and for furnishing resources to the Implementation Body.

*Alternative option:* That there be no membership or employment requirement for mediators. In such a system there would have to be a staffed national system for initial assessment, for CPD and for complaints, discipline and possible de-accreditation.

## VI Continuing Professional Development

1. In order to retain Accreditation to the National Mediation Standard, mediators will be required to undergo continuing professional development (CPD).<sup>12</sup>

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<sup>11</sup> There was general concern about the quality and standards of education and training and the view was frequently expressed this should be commensurate with the progressive goals of the system.

2. CPD requirements will be finalised by the Implementation Body and will revolve around a points system which has to be satisfied over a two-year period involving the requisite number of points in at least three of five categories – see the model system in Annexure D.
3. CPD can be provided by RMABs and other appropriate bodies such as universities, training institutions and professional associations and mediators will be able to choose with which bodies they undertake CPD requirements.
4. Mediators will be required to report compliance with CPD requirements on an honour basis to a RMAB, which will notify any non-compliance to the Implementation Body responsible for the upkeep of the National Register of Accredited Mediators.
5. In developing CPD requirements the Implementation Body will take account of the access and cost implications for mediators in rural and remote areas and how they can be accommodated in as equitable a way as possible.
6. Where mediators have to undertake CPD for other professional purposes this can also count towards CPD under the System, provided it satisfies the requirements stipulated by the Implementation Body.

## VII Complaints, Discipline and De-Accreditation

1. RMABs will be required, as part of their recognition requirements, to provide a procedural framework for dealing with complaints and grievances against mediators.
2. The procedural framework must ensure that complaints and grievances are handled with as little technicality and formality as possible in a process which accords procedural fairness to all parties.
3. Where a mediator is found to be in breach of the mediator Code of Practice he or she may be suspended from accreditation to the NMS, on a temporary or permanent basis.
4. Mediators will be automatically de-accredited if they fail to comply with their ongoing requirements for Accreditation to the National Mediator Standard.
5. All mediators will have a right of appeal from the decision of an RMAB to the Implementation Body.

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<sup>12</sup> While there was some support for a re-accreditation requirement, as under the new Victorian Bar mediator accreditation scheme, the more preponderant view was that this should be subsumed under the CPD requirements.

*Alternative option* – That there be a national complaints body which would be activated to deal with complaints and grievances when necessary, or fill the role of an independent checking body; this would require resourcing, personnel and infra-structure.

## VIII Initial Implementation Stage

1. For the first two years of the System an Implementation Body will undertake activities required for the establishment and early operation of the System.
2. The Implementation Body will be appointed by the National Mediation Conference Ltd on a basis which ensures that it represents the diversity of Australian mediators and mediation practice.
3. The Implementation Body will, as soon after the Conference as possible attend to:
  - a. The recognition of RMABs;
  - b. The drafting of the uniform Code of Practice;
  - c. The admission of experienced mediators into the System on the basis of their training and experience.
4. The Implementation Body will investigate sources of funding from government and elsewhere for the early operation of the system.
5. The Implementation Body will make six-monthly reports to the directors of the National Mediation Conference and the Accreditation Committee of NADRAC during the two-year implementation period and will report to the 9<sup>th</sup> National Mediation Conference in 2008 on the first two years of the System's operation.
6. The Implementation Body will maintain a National Register of Mediators Accredited to the National Mediation System.

## IX National Register of Mediators Accredited to the NMS

1. There will be a National Register of Mediators Accredited to the NMS.
2. The Register will contain standardised information on Accredited mediators and will be updated in the light of new accreditations, lapsed accreditations and de-accreditations.
3. Information on the Register will be accessible to the public, service-providers, courts, tribunals and other interested parties.<sup>13</sup>

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<sup>13</sup> Mediation providers may elect to make referrals only to mediators on the National Register of Mediators Accredited to the NMS. Mediation bodies funded by government may be required to use only NMS-Accredited mediators. 'Trust marking' might be used by commercial enterprises where

4. The National Register will disclose to the public through a series of web pages the information referred to in Annexure E.

## X Resourcing

1. The System will be resourced through fees paid by mediators who seek Accreditation in terms of the System or who seek to be admitted into the System on the basis of prior learning and experience.
2. RMABs and Federal and State governments may be requested by the Implementation Body to contribute resources for the implementation and operation of the System, such as the financing of a part-time secretariat.
3. Resourcing will be sought from RMABs for the review and evaluation of the System after its first two years of operation; such funding will be based on an equitable allocation of contributions among relevant bodies.<sup>14</sup>

## XI Recognition of Prior Learning and Experience

1. The System will recognise the prior learning, accreditation, practical mediation experience, and other relevant qualifications of existing mediators.
2. Recognition of prior learning and experience will be given on a flexible basis but there will be no automatic 'grandparenting' into the system.

*Alternative options* – That in order to enhance the status of the System all existing mediators who wish to be Accredited to the National Mediator Standard will be required to apply for Accreditation and undergo training, assessment and accreditation in terms of the System; or that 'grandparenting' be granted on a temporary basis after which mediators would have to apply for Accreditation in terms of the System.

3. The principles for recognition of prior learning, experience and accreditation will be laid down by the Implementation Body and will take account of the recency of education and training, prior assessment of mediator knowledge and competency, the duration and regularity of mediation practice, and other relevant criteria such as references,. The principles will be applied by RMABs to mediators seeking admission to Accreditation to the NMS through recognition of their prior learning and experience.
4. Any experienced mediators Accredited into the System by an RMAB will be subject to the ongoing CPD and other requirements of the System.

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their mediators are NMS-Accredited. Contractual dispute resolution clauses, industry codes and other instruments may require the provision of services by NMS-Accredited mediators.

<sup>14</sup> The user pay system could be based on a small levy paid by mediators Accredited to the NMS.

## XII System Evaluation and Review

1. The System will be reviewed after two years, with a view to evaluating its merits and demerits and the possibility of developing the System further.
2. The review will focus, among other things, on the extent of mediator take-up in the System, on the attitudes and experiences of consumers, on how the costs of its operation are being borne, on the effectiveness of the Register and the complaints and de-accreditation procedures, on any structural conflicts of interest in the system (for example in organisations which both train and accredit), on how the System aligns with other accreditation systems, on the resourcing issue and the costs to mediators, and on the attitude of governments, courts and industry bodies to the operation of the System.
3. The review and its recommendations will be made available at the 2008 National Mediation Conference for consideration and decisions as to the future of the System.

## Annexure A            The National Mediation Standard

In order to be Accredited under the System mediators should be persons of fit and proper character who have been educated, trained and assessed in terms of:

1. Substantive knowledge relating to:
  - a. The nature of conflict, including the dynamics of power and violence;
  - b. The appropriateness or inappropriateness of mediation;
  - c. Pre-mediation preparation, screening and intake;
  - d. Communication patterns in conflict situations;
  - e. Negotiation dynamics in mediation;
  - f. Cross-cultural issues in mediation and dispute resolution;
  - g. The principles, stages and functions of the mediation process;
  - h. The roles and functions of mediators;
  - i. The roles and functions of support persons, lawyers and other professionals in mediation;
  - j. Key issues in a specific Code of Practice referred to in the course;
  - k. The basic law of mediation on confidentiality, enforceability of mediated agreements and liability of mediators.
  
2. Skills and techniques in:
  - a. Preparation for mediation;
  - b. Intake and screening of the parties and dispute to assess suitability for mediation;
  - c. Conduct and management of the mediation process;
  - d. Appropriate communication skills, including listening, questioning and reframing, required for the conduct of mediation;
  - e. Negotiation techniques and the mediator's role in facilitating negotiation and problem-solving;
  - f. Mediator interventions appropriate for standard difficulties in mediation;
  - g. Potential responses to high emotion, power imbalances and violence;
  - h. Use of separate meetings and shuttle mediation;
  - i. Drafting of mediated agreements;
  - j. Protocols for terminating mediation;
  - k. Anticipating and responding to post-mediation difficulties;
  - l. The use of information and computer technology in mediation practice.
  
3. Ethical understanding in relation to:
  - a. The avoidance of conflict of interests;
  - b. Marketing and advertising of mediation;
  - c. Confidentiality, privacy and reporting obligations;
  - d. Neutrality and impartiality;
  - e. Fiduciary obligations;
  - f. Ensuring fairness and equity in mediation;
  - g. Withdrawal from and termination of the mediation process.



## Annexure B Recognition of RMABs

RMABs will be recognised in terms of their capacity and facilities to:

1. To assess and accredit mediators in terms of the requirements of the System.
2. To provide education, training and assessment of mediators in terms of the System, or to have a relationship with bodies other than RMABs which provide the education, training and assessment required in terms of the System.<sup>15</sup>
3. Organisations applying for RMAB status must provide the following information about the education, training and assessment which they provide or which they use on an out-sourced basis:
  - a. The qualifications and experience, as mediators and educators, of the principal course instructors responsible for conducting the education and training course and the assessment of participants;
  - b. The teaching and learning methodologies underlying the education and training courses;
  - c. Course manuals or workbooks, lists of books or reading requirements, and other prescribed materials;
  - d. The course program, indicating the topics and time spent dealing with the different aspects of knowledge, skills and ethics required by mediators;
  - e. The Code of Mediator Practice used in the course as a basis for education and training on issues of mediator ethics and standards;
  - f. The methods of assessment used to examine the knowledge, skills and competence of trainees;
  - g. Assessment instruments used for assessing mediator skills and techniques;
  - h. The past involvement of the institution and/or its instructors in mediator education and training;
  - i. The ratio of instructors and coaches to participants in education and training courses;
  - j. Any other information which goes to establish the credentials of the institution as a mediator educational, training and assessment institution (for example course evaluations, testimonials, references).
4. Provide Continuing Professional Development for mediators as required in the System.
5. Provide the infra-structure required to receive and process complaints and grievances against mediators and make decisions on sanctions, including de-accreditation.

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<sup>15</sup> Bodies such as universities or small training organizations may not wish to become RMABs but provide their educational and training services to RMABs, which will be responsible for assessing the quality and standards of education and training.

7. Have sound governance structures, financial viability and the administrative resources to contribute to the operation and development of the System.
6. Undertake such other activities and functions required by the changing needs of the System.

## Annexure C          Education, Training and Assessment Requirements

1. A training team comprising principal instructors, and assistant instructors or coaches, with suitable qualifications and experience as educators and mediators.
2. A ratio of one instructor or coach for every three participants in the simulation part of the training.
3. An education and training program of a minimum of 40 hours in duration, excluding the assessment period.<sup>16</sup>
4. Involvement by each course participant in at least six simulated mediation sessions, in at least two of which they perform the role of mediator. Assessment of mediator competence in the two simulations will be undertaken by different members of the training team, and will be recorded in written form in an assessment instrument and will be provided to the participant.
5. Completion by each course participant of written debriefing evaluations of two simulated mediations, one in which they were a disputant and the other a mediator, in a prescribed evaluation form.
6. Completion of a written examination of between 45 and 60 minutes in duration in which participants are assessed on their theoretical knowledge and understanding of mediation practice and asked to suggest appropriate or preferred ways of dealing with specific ethical dilemmas, tactical issues or difficult scenarios which can arise in mediation.
7. The overall assessment of participants for Accreditation will be based on competence displayed in mediation simulations, awareness displayed in the written debriefings, performance in the examination, and general course participation such as contributions to the discussions on ethical or critical issues. A written report will be provided to each participant detailing:
  - a. The outcome of the skills assessment (in terms of competent or not yet competent);
  - b. Relevant strengths and how they were evidenced;
  - c. Relevant weaknesses and how they were evidenced;
  - d. Relevant recommendations for further training and skills development.

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<sup>16</sup> It was noted during the public consultations that in some overseas countries the education and training requirements range between 150 and 600 hours in duration.

## Annexure D Continuing Professional Development Requirements

The following model will guide the Implementation Body in the finalisation of the CPD requirements for mediators Accredited to the NMS:

Within each two-year cycle mediators will have to obtain at least 50 CPD points, comprising 20 points from category 1 and 30 points from at least two of the other four categories:

1. The conduct of six mediations or co-mediations (20 points);
2. Representation of clients in four mediations (10 points);
3. Attendance at CPD courses or workshops on mediation or ADR for 20 hours; (20 points);
4. External supervision or auditing of their clinical practice (10 points);
5. Presentations at mediation or ADR seminars or workshops (10 points);
6. Other relevant experience as a practitioner or consultant in dispute resolution and conflict management (10 points).

## Annexure E          National Register of Mediators

The National Register of Mediators shall be maintained as an electronic database by the Implementation Body. A public view of the database will be provided through an internet site established for that purpose. The internet site will display at least the following information for mediators Accredited to the NMS:

1. Name of mediator;
2. Relevant RMAB and link to that RMAB;
3. Principal location of practice;
4. Link to the relevant Code of Practice.

At the option of the Implementation Body it may also contain a link to the mediator's CV (whether resident on an RMAB site or not) and an email link to the mediator.

## Appendix F

### Revised Standards Document

AUSTRALIAN NATIONAL MEDIATOR STANDARDS

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# **APPROVAL STANDARDS**

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FOR MEDIATORS SEEKING APPROVAL UNDER THE  
NATIONAL MEDIATOR ACCREDITATION SYSTEM

SEPTEMBER 2007





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## Approval Standards

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### 1 Application

- 1) These Approval Standards apply to any person who voluntarily seeks to be accredited under the National Mediator Accreditation System ('the system') to act as a mediator and assist two or more participants to manage, settle or resolve disputes or to form a future plan of action through a process of mediation. Practitioners who act in these roles are referred to in these Approval Standards as mediators.
- 2) The Approval Standards:
  - a) specify requirements for mediators seeking to obtain approval under the voluntary national accreditation system; and
  - b) define minimum qualifications and training; and
  - c) assist in informing participants, prospective participants and others what qualifications and competencies can be expected of mediators.
- 3) As a condition of ongoing approval, mediators must comply with the Practice Standards and seek re-approval in accordance with these Approval Standards every two years. These Approval Standards should be read in conjunction with the Practice Standards that apply to mediators.
- 4) Mediation can take place in all areas where decisions are made. For example, mediation is used in relation to commercial, community, workplace, environmental, construction, family, building, health and educational decision making. Mediation may be used where there is conflict or may be used to support future decision making. Mediators are drawn from diverse backgrounds and disciplines. Mediation may take place as a result of Court or Tribunal referral, pre-litigation schemes, through industry schemes, community-based schemes as well as through private referral, agency, self or other referral. These Approval Standards set out minimum voluntary accreditation requirements and recognise that some mediators who practice in particular areas, and/or with particular models, may choose to develop or comply with additional standards or requirements. Mediators may practice as 'solo' mediators or may co-mediate with another mediator.

### 2 Description of a Mediation Process

- 1) A mediation process is a process in which the participants, with the support of a mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to support participants to reach their own decision.
- 2) The mediator[s] may assist the participants to:
  - a) communicate with each other; and
  - b) identify, clarify and explore disputed issues; and

- c) generate and evaluate options; and
  - d) consider alternative processes for bringing any dispute or conflict to a conclusion; and
  - e) reach an agreement or make a decision about how to move forward and/or enhance their communication in a way that addresses participants' mutual needs with respect to their individual interests based upon the principle of self determination.
- 3) Mediation processes are primarily facilitative processes. The mediator provides assistance in managing a process which supports the participants to make decisions about future actions and outcomes.
- 4) Some mediators may also use a 'blended' process that involves mediation and incorporates an 'advisory' component, or a process that involves the provision of expert information and advice, where it enhances the decision-making of the participants provided that the participants agree that such advice can be provided. Such processes may be defined as 'conciliation' or 'evaluative mediation.' Practitioners who manage such processes and provide expert advice are required to have appropriate expertise (see Section 5 (4) below) and obtain clear consent from the participants in respect of undertaking any 'blended' advisory process.
- 5) Mediation processes are a complement to, not a substitute for, the need for participants to obtain individual legal or other expert advice and support. Mediation processes may not be appropriate for all individuals or all circumstances.

### 3 Approval Requirements for Mediators

- 1) A mediator manages processes aimed at maximising the participants' own decision making. The mediator must have personal qualities and appropriate life, social and work experience to conduct the process independently and professionally. To be accredited, the Recognised Mediation Accreditation Body (RMAB) requires a mediator to provide the following:
- a) evidence of good character (see Section 3(2) below); and
  - b) an undertaking to comply with ongoing practice standards and compliance with any legislative and approval requirements (see Section 3(3) below); and
  - c) evidence of relevant insurance, statutory indemnity or employee status (see Section 3(4) below); and
  - d) evidence of membership or a relationship with an appropriate association or organisation that has appropriate and relevant ethical requirements, complaints and disciplinary processes as well as ongoing professional support (see Section 3(5) below); this may be the RMAB itself but may also include other relevant memberships or relationships; and
  - e) evidence of mediator competence by reference to education, training and experience (see Section 4 below).
- 2) RMABs require mediators who apply to be accredited to provide evidence of 'good character.' With respect to the requirement to be of 'good character', RMABs may, for example, request mediators to:

- a) provide evidence that they are regarded as honest and fair, and that they are regarded as suited to practice mediation by reference to their life, social and work experience, for example, by seeking references from two members of their community who have known them for more than three years; and
  - b) show that they can meet the requirements of a police check in the State or States or Territory or Territories in which they practise; and
  - c) show that they are without any serious conviction or impairment that could influence their capacity to discharge their obligations in a competent, honest and appropriate manner; and
  - d) show that they are accredited with an existing scheme that has existing 'good character' requirements that they comply with (for example, by referring to existing Law Institute, Law Society, Bar or Family Dispute Resolution Practitioner accreditation where relevant); and
  - e) satisfy the RMAB that they do not come into the category of a 'prohibited person' (or its equivalent) as defined in a particular jurisdiction and also not be disqualified to practice by another professional association relating to any other profession (for example, a Law Society or a Medical Association) or must explain to the RMAB the circumstances under which they have previously been removed or suspended from acting as a mediator under these standards.
- 3) The mediator must undertake to the RMAB to comply with any relevant legislation, these Practice and Approval Standards and any other approval requirements that may relate to particular schemes.
- 4) In respect of the insurance, indemnity or employed status requirements, the mediator must provide the RMAB with evidence of their current status. This may be provided in a range of ways, for example, by a letter setting out any relevant employee status, or by showing how indemnity applies, or by showing proof of membership that incorporates insurance status, or by the mediator naming their insurer, providing an insurance policy number and its expiry date or, through some other relevant document. If a mediator wishes to practice using a 'blended' model and in an advisory manner, the mediator must hold additional insurance relating to the provision of expert advice or must indicate how existing insurance, statutory or other immunities apply.
- 5) An RMAB must have the following characteristics:
- a) more than ten mediator members; and
  - b) provision of a range of member services such as, an ability to provide access to or refer mediators to ongoing professional development workshops, seminars and other programs and debriefing, or mentoring programs; and
  - c) a complaints system that either meets Benchmarks for Industry-based Customer Dispute Resolution or be able to refer a complaint to a Scheme that has been established by Statute; and,
  - d) sound governance structures, financial viability and appropriate administrative resources; and,
  - e) sound record-keeping in respect of the approval of practitioners and the approval of any in-house, outsourced or relevant educational courses; and,
  - f) the capacity and expertise to assess training and education that may be offered by a range of training providers in respect of the training and education requirements set out in these Standards.

An RMAB can be a professional body, a mediation agency or Centre, a Court or Tribunal, or some other entity.

#### **4 Training and Education**

- 1) Mediators must demonstrate to an RMAB that they have appropriate competence by reference to applicable practice standards, their qualifications, training and experience. It is not necessary for the RMAB to provide education and training to individual mediators (see Section 5 below). Training and education may be provided by organisations other than RMABs, such as, industry training providers, universities and other training providers.
- 2) A mediator is required to meet the threshold approval requirements detailed below (see Section 5 below), as well as ongoing professional education requirements. A mediator who uses a ‘blended’ process and provides information or advice in the context of a ‘blended’ process must be competent to do so and possess the appropriate skills, knowledge and expertise.

#### **5 Threshold Training and Education Requirements**

- 1) Unless ‘experience qualified’ (see Section 5 (3) below), from 1 January 2008, a mediator must have completed a mediation education and training course that:
  - a) is conducted by a training team comprised of a at least two instructors where the principal instructor[s] has more than three years’ experience as a mediator and has complied with the continuing accreditation requirements set out in Section 6 below for that period and has at least three years’ experience as an instructor; and
  - b) has assistant instructors or coaches with a ratio of one instructor or coach for every three course participants in the final coached simulation part of the training and where all coaches and instructors are accredited; and
  - c) is a program of a minimum of 38 hours in duration (which may be constituted by more than one mediation workshop provided not more than nine months has passed between workshops), excluding the assessment process referred to in Section 5(2) below; and
  - d) involves each course participant in at least nine simulated mediation sessions and in at least three simulations each course participant performs the role of mediator; and
  - e) provides written, debriefing coaching feedback in respect of two simulated mediations to each course participant by different members of the training team.
- 2) Unless ‘experience qualified’ (see Section 5(3) below), from 1 January 2008, a mediator must also have completed to a competent standard. a written skills assessment of mediator competence that has been undertaken in addition to the 38-hour training workshop referred to above , where mediator competence in at least one 1.5 hour simulation has been undertaken by either a different member of the training team or a person who is independent of the training team. The written assessment must reflect the core competency areas referred to in the Practice Standards. The final skills assessment mediation simulation may be undertaken in the form of a video or DVD assessment with role players, or as an assessed exercise with role players. The written report must detail:

- a) the outcome of the skills assessment (in terms of competent or not yet competent); and
  - b) relevant strengths and how they were evidenced; and
  - c) relevant weaknesses and how they were evidenced; and
  - d) relevant recommendations for further training and skills development.
- 3) 'Experience qualified' practitioners are those who have been assessed by an RMAB as demonstrating a level of competence by reference to the competencies expressed in the Practice Standards. An experience qualified mediator must either:
- a) be resident in a linguistically and culturally diverse community for which specialised skills and knowledge are needed and/or from a rural/or remote community where there is difficulty in attending a mediation course or attaining tertiary or similar qualifications; or
  - b) have worked as a mediator prior to 1 January 2008 and have experience, training, and education that satisfies an RMAB that the mediator is equipped with the skills, knowledge and understandings set out in the core competencies referred to in the Practice Standards, and who has met the continuing accreditation requirements set out in Section 6 below in the 24 months prior to making an application.
- 4) Practitioners who seek to offer advice through the use of a 'blended' process such as conciliation or advisory or evaluative mediation must also provide evidence to the RMAB of:
- a) their continuing registration, membership or equivalent within the professional area in which advice is to be given, and
  - b) completion of an appropriate degree, or equivalent qualification in the area of their expertise from a university or former college of advanced education, of at least four years equivalent full-time duration, or a VET-approved organisation to a National Framework Level 6 standards; and
  - c) a minimum of five years' experience in the professional field in which they seek to provide advice.

## **6 Continuing Accreditation Requirements**

- 1) Mediators who seek to be reaccredited must satisfy their RMAB that they continue to meet the approval requirements set out in Section 3 of this document. In addition mediators seeking re accreditation must, within each two-year cycle, provide evidence to the RMAB that they have:
- a) sufficient practice experience by showing that they have either:
    - i) conducted at least 25 hours of mediation, co-mediation or conciliation (in total duration) within the two-year cycle; or,
    - ii) where a mediator is unable to provide such evidence for reasons such as, a lack of work opportunities (in respect of newly qualified mediators); a focus on work undertaken as a dispute manager, facilitator, conflict coach or related area; a family, career or study break; illness or injury, an RMAB may require the mediator to have completed no less than 10 hours of mediation, co-

mediation or conciliation work per two-year cycle and may require that the mediator attend 'top up' training or reassessment;

and,

- b) have completed at least 20 hours of continuing professional development in every two-year cycle that can be made up as follows:
  - i) attendance at continuing professional development courses, educational programs, seminars or workshops on mediation or related skill areas as referred to in the competencies (see the Practice Standards) (up to 20 hours);
  - ii) external supervision or auditing of their clinical practice (up to 15 hours);
  - iii) presentations at mediation or ADR seminars or workshops including two hours of preparation time for each hour delivered (up to 16 hours);
  - iv) representing clients in four mediations (up to a maximum of 8 hours);
  - v) coaching, instructing or mentoring of trainee and/or less experienced mediators (up to 10 hours);
  - vi) role playing for trainee mediators and candidates for mediation assessment or observing mediations (up to 8 hours);
  - vii) mentoring of less experienced mediators and enabling observational opportunities (up to 10 hours).
- 2) Ongoing accreditation as a mediator requires the mediator to meet the practice standards and competencies described in the Practice Standards. An RMAB has discretion to remove or suspend a mediator in circumstances where it believes, on the balance of probabilities, that there has been non compliance with the Practice Standards, other relevant ethical guidelines or professional requirements, or these Approval Standards. In relation to any removal or suspension, a mediator must be informed within 14 days of the concerns of the RMAB and provided with an opportunity to respond to the RMAB. The RMAB must have a process in place to deal with removal and suspension or must be able to provide access to a process where such decisions can be made in a procedurally fair manner.

AUSTRALIAN NATIONAL MEDIATOR STANDARDS

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# **PRACTICE STANDARDS**

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FOR MEDIATORS OPERATING UNDER THE NATIONAL MEDIATOR  
ACCREDITATION SYSTEM

SEPTEMBER 2007





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# Practice Standards

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## 1 Application

- 1) These Practice Standards apply to any mediator acting as a third party to support two or more individuals or entities to manage, settle or resolve disputes, or to form a future plan of action through a process of mediation and who voluntarily decides to become accredited under the National Mediator Accreditation Scheme. Practitioners who act in these roles are referred to in these Practice Standards as mediators. A mediator supports participants in a mediation process to identify, clarify and explore issues, to generate and consider options and to make decisions about future actions and outcomes. The Practice Standards are intended to govern the relationship of mediators with the participants in the mediation, their professional colleagues, courts and the general public so that all will benefit from high standards of practice in mediation.
- 2) The Practice Standards:
  - a) specify practice and competency requirements for mediators; and
  - b) inform participants and others about what they can expect of the mediation process and mediators.
- 3) Mediators voluntarily accredited under the Australian National Mediator Standards must comply with the Approval Standards as well as the Practice Standards. These Practice Standards should be read in conjunction with the Approval Standards.
- 4) There are a range of different mediation models in use across Australia. As noted in the Approval Standards, mediation can take place in all areas where decisions are made. For example, mediation is used in relation to commercial, community, workplace, environmental, construction, family, building, health and educational decision making. Mediation may be used where there is conflict or may be used to support future decision making. Mediators are drawn from diverse backgrounds and disciplines. Mediation may take place as a result of Court or Tribunal referral, pre-litigation schemes, through industry schemes, community based schemes as well as through private referral, agency, self or other referral. These Practice Standards set out minimum practice requirements and recognise that some mediators who practice in particular areas of with particular models may choose to develop or comply with additional standards or requirements. Mediators may practice as ‘solo’ mediators or may co-mediate with another mediator.

- 5) Where mediators practice under existing legislative frameworks and there is a conflict between the requirements of these Practice Standards and any legislation, the respective legislative requirements will override those of the Practice Standards to the extent of any inconsistency.

## 2 Description of a Mediation Process

The purpose of a mediation process is to maximise participants' decision making.

- 1) A mediation process is a process in which the participants, with the support of a mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to assist the participants to reach their decision.
- 2) Mediation processes are not a substitute for individual or organisational legal and/or other expert advice, or individual counselling or therapy. Mediation processes may not be appropriate for all disputants or all types of disputes.
- 3) The goal of a mediation process is agreed upon by the participants with the assistance of the mediator. Examples of goals may include assisting the participants to make a wise decision, to clarify the terms of a workable agreement and/or future patterns of communication that meet the participants' needs and interests, as well as the needs and interests of others who are affected by the dispute.
- 4) The mediation process may:
  - a) assist the participants to define and clarify the issues under consideration;
  - b) assist participants to communicate and exchange relevant information;
  - c) invite the clarification of issues and disputes to increase the range of options;
  - d) provide opportunities for understanding;
  - e) facilitate an awareness of mutual and individual interests;
  - f) help the participants generate and evaluate various options; and
  - g) promote a focus on the interests and needs of those who may be subject to, or affected by, the situation and proposed options.
- 5) Mediators do not advise upon, evaluate or determine disputes. They assist in managing the process of dispute and conflict resolution whereby the participants agree upon the outcomes, when appropriate. Mediation is essentially a process that maximises the self determination of the participants. The principle of self determination requires that mediation processes be non-directive as to content.
- 6) Some mediation processes may involve participants seeking expert information from a mediator which will not infringe upon participant self-determination. Such information is deemed to be consistent with a mediation process if that information is couched in general and non-prescriptive terms, and presented at a stage of the process which enables participants to integrate it into their decision making. Such information might include the provision of general information and a reference to available material that could assist the participants. For example, a referral to resources that could be used by parents in a family dispute to determine the impact of options upon children or other family members.

- 7) Some mediators may use a ‘blended process’ model whereby they provide advice. These processes are sometimes referred to as ‘advisory mediation’, ‘evaluative mediation’ or ‘conciliation’. Such processes may involve the provision of expert information and advice, provided it is given in a manner that enhances the principle of self-determination and provided that the participants request that such advice be provided. Mediators who provide expert advice are required to have appropriate expertise (see Approval Standards at Section 5 (4)) and to obtain the consent of participants prior to providing any advisory process.

### 3 Starting a Mediation Process

Before mediating, a mediator should ensure that an outline of the mediation process has been given to the participants.

- 1) The diversity in mediation practice means that there are considerable differences in terms of how participants enter into a mediation process. Where mediators are bound by existing professional or organisational requirements relating to entry into a mediation process and to the extent that such professional or organisational requirements contradict with the Practice Standards, the existing professional or organisational requirements should prevail.
- 2) Prior to the mediation taking place, the mediator will ensure that the participants have been provided with an explanation of the process and have had an opportunity to reach agreement about the way in which the process is to be conducted. This may take place in an intake process that is held separately from a mediation session. The person conducting the intake process may be a different person to the mediator.
- 3) The objectives of an intake process may include:
  - a) Determining whether mediation is appropriate and whether variations are required (for example, using an interpreter or a co-mediation model in culturally and linguistically diverse communities or varying arrangements where violence is an issue).
  - b) Assisting the participants to prepare for the process. Participants who are prepared and who have received relevant advice are in the best position to make an informed decision when attending a mediation.
  - c) Ensuring that every participant receives information about the roles of each party in the mediation; this discussion may involve questions relating to the role of lawyers, support people and others.
  - d) Checking whether any information needs to be exchanged, how this can be done and what information, documents or things need to be available during the mediation process.
  - e) Settling any preliminary procedural issues, for example:
    - i) what documents/notes will be kept by the mediator?
    - ii) will the process be confidential (if it is an internal process, what reporting will take place)?
    - iii) will the participants have authority to negotiate?
  - f) Clarifying the terms of any agreement to enter into the process.

- g) Settling venue and timing issues.
- 4) The mediator should:
  - a) describe and explain the mediation process that is to be used;
  - b) where necessary, discuss the appropriateness of the process for the participants in light of their particular circumstances, the benefits and risks of the process, and the other alternatives open to the participants;
  - c) discuss the confidentiality of the mediation and any limitations on such confidentiality;
  - d) advise the participants about how they or the mediator can suspend or terminate the mediation;
  - e) reach agreement with the participants about any costs and how such costs are to be paid;
  - f) advise the participants about any indemnity provisions contained in any agreement to mediate, for example, where a mediator seeks to be indemnified in respect of his or her costs in response to any legal costs that may be incurred by the mediator;
  - g) advise the participants of the mediator's role in relation to the provision of advice or other services for example:
    - i) if the mediator is also a lawyer, he or she shall inform the participants that he or she cannot provide legal advice unless using a 'blended process' model and with their clear consent or represent any of the participants in any related legal action,
    - ii) if the mediator is a psychologist, counsellor or therapist, he or she shall inform the participants that he or she cannot counsel or practise therapy with either or any of the participants.
  - h) discuss with or inform the participants about the procedures and practices in the mediation, such as:
    - i) the circumstances under which separate sessions may be held,
    - ii) how participants may seek information and advice from a variety of sources during the process,
    - iii) how participants may withdraw from the process,
    - iv) that participants are not required to reach an agreement,
    - v) the opportunities for separate communication with the participants and/or with their legal representatives,
    - vi) the circumstances in which other persons can be involved in the process, for example, the participation of experts, support persons or interpreters who may be involved in the mediation.
- 5) Wherever considered beneficial by the participants, the agreement to enter into mediation will be in writing. Any agreement with respect to the confidentiality of a session, or any waiver of such confidentiality, may also be acknowledged in writing by all participants. If there is no written agreement, for example, where mediation is conducted by a Court or Tribunal member and is governed by legislation, then the mediator will record the participants' understanding as to entry into the process and confidentiality.
- 6) Mediators will provide the participants with a copy of these Practice Standards, or advise where and how they can be accessed, for example, by referring to a web site.

## 4 Power Issues

Mediators shall have completed training that assists them to recognise power imbalance and issues relating to control and intimidation and take appropriate steps to manage the mediation process accordingly.

- 1) Some disputes may not be appropriate for mediation processes because of power imbalance, safety, control and/or intimidation issues.
- 2) If at any time abuse is present, or implied or threatened, the mediator shall take appropriate measures to ensure the safety of participants. Options include:
  - a) activating appropriate pre-determined security protocols;
  - b) using video conferencing or other personal protective and screening arrangements;
  - c) requiring separate sessions with the participants;
  - d) enabling a friend, representative, advocate, or legal representative to attend the mediation sessions;
  - e) referring the participants to appropriate resources; and
  - f) suspending or terminating the mediation session, with appropriate steps to protect the safety of the participants.

## 5 Impartial and Ethical Practice

A mediator must conduct the dispute resolution process in an impartial manner and adhere to ethical standards of practice.

- 1) Impartiality means freedom from favouritism or bias either in word or action, or the omission of word or action, that might give the appearance of such favouritism or bias. A mediator will disclose actual and potential grounds of bias and conflicts of interest. The participants shall be free to retain the mediator by an informed waiver of the conflict of interest. However, if in the view of the mediator, a bias or conflict of interest impairs their impartiality, the mediator will withdraw regardless of the express agreement of the participants.
- 2) A mediator should identify and disclose any potential grounds of bias or conflict of interest that emerge at any time in the process. Clearly, such disclosures are best made before the start of a process and in time to allow the participants to select an alternative mediator. Mediators should take reasonable steps to minimise the chances of being in a position of potential bias or conflict of interest before the process commences.
- 3) A mediator should avoid conflicts of interest, or potential grounds for bias or the perception of a conflict of interest, in recommending the services of other professionals. Where possible, the mediator should provide several alternatives if recommending referrals to other practitioners and services.
- 4) A mediator will not use information about participants obtained in mediation for personal gain or advantage.

- 5) The perception by one or both of the participants that the mediator is partial does not in itself require the mediator to withdraw. In such circumstances, however, the mediator must remind all parties of a right to terminate the mediation process.
- 6) A mediator should not become involved in relationships with parties that might impair the practitioner's professional judgment or in any way increase the risk of exploiting clients. Except where culturally required, practitioners will not facilitate disputes involving close friends, relatives, colleagues/supervisors or students.
- 7) Mediators should adhere to, and be familiar with, the code of conduct or ethical standards prescribed by the organisation or association with which they have membership (see Approval Standards).

## 6 Confidentiality

A mediator should respect the confidentiality of the participants.

- 1) A mediator shall not voluntarily disclose to anyone who is not a party of the mediation any information obtained except:
  - a) non-identifying information for necessary administrative, research, supervisory or educational purposes; or
  - b) with the consent of the participants to the mediation process; or
  - c) when required to do so by law; or
  - d) where permitted by existing ethical guidelines or requirements and the information discloses an actual or potential threat to human life or safety.
- 2) The mediator will clarify the participants expectations of confidentiality before undertaking the mediation process. Any written agreement to enter into the process should include provisions concerning confidentiality.
- 3) Before undertaking the mediation process, the mediator will inform the participants of the limitations of confidentiality, such as statutory, judicially or ethically mandated reporting, such as any reporting required pursuant to professional ethical requirements.
- 4) If the mediator holds separate sessions with a participant, the obligations of confidentiality concerning those sessions should be discussed and agreed upon before the sessions.
- 5) If subpoenaed, or otherwise notified to testify or to produce documents, the mediator should attempt to inform the participants as soon as reasonably practicable. The mediator should not give evidence without an order of the Court or Tribunal if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants. The mediator may include indemnification provisions in relation to costs incurred (see Section 3(2)(f)).
- 6) With the participants' consent, the mediator may discuss the mediation process with the participants' lawyers and other expert advisors where such advisors have not attended all or part of the actual mediation session.



- 7) Where the participants reach an agreement in a mediation process, the substance of the proposed agreement may, with the permission of participants, be disclosed to their respective representatives, advisors or others and may be used in a de-identified form for debriefing, research processes and discussion purposes.
- 8) The mediator should maintain confidentiality in the storage and disposal of client records and must ensure that office and administrative staff maintain such confidentiality. Overall, mediators are not required to retain documents relating to a dispute although they may retain any written agreement to enter into the mediation process and any written agreement as to outcomes. Some mediators may also choose to retain notes relating to the content of the dispute particularly where duty-of-care or duty-to-warn issues are identified.

## 7 Competence

Mediators must be competent and have relevant skills and knowledge.

- 1) Mediators should seek regular professional debriefing. The purpose of debriefing is to address matters relating to skills development, conceptual and professional issues, ethical dilemmas, and to ensure the ongoing emotional health of mediators. Debriefing can take place following a solo mediation, a co-mediation, in groups or through independent sessions with another experienced mediator.
- 2) Mediators should also participate in continuing professional development training. Where possible, mediators should also participate in programs of peer consultation and should help train and mentor the work of less experienced mediators.
- 3) Mediators should be competent and have the capacity to apply knowledge, skills and an ethical understanding and commitment in the areas listed below. Mediators demonstrate competence by showing that they have the requisite knowledge and skills and can apply them. Mediators are required to ensure that ongoing professional development is focused on achieving and maintaining competencies including:
  - a) KNOWLEDGE
 

In areas including, but not limited to:

    - i) The nature of conflict, including the dynamics of power and violence.
    - ii) The appropriateness or inappropriateness of mediation.
    - iii) Pre-mediation preparation, screening and intake.
    - iv) Communication patterns in conflict and negotiation situations.
    - v) Negotiation dynamics in mediation.
    - vi) Cross-cultural issues in mediation and dispute resolution.
    - vii) The principles, stages and functions of a mediation process.
    - viii) The roles and functions of mediators.
    - ix) The roles and functions of support persons, lawyers and other professionals in mediation.
    - x) The law of mediation on confidentiality, enforceability of mediated agreements and liability of mediators.

- b) **SKILLS**, including, but not limited to:
  - i) Preparation and dispute diagnosis in mediation.
  - ii) Intake and screening of both the parties and the dispute to assess suitability for mediation.
  - iii) Conduct and management of the mediation process.
  - iv) Appropriate communication skills, including listening, questioning, reflecting and summarising, required for the conduct of mediation.
  - v) Negotiation techniques and the mediator's role in facilitating negotiation and problem-solving.
  - vi) Mediator interventions appropriate for standard difficulties in mediation
  - vii) Potential responses to high emotion, power imbalances and violence.
  - viii) Use of separate meetings and shuttle mediation.
  - ix) Asking questions about or in appropriate circumstances, drafting of mediated agreements.
  
- c) **ETHICAL UNDERSTANDINGS** in relation to:
  - i) The avoidance of conflicts of interest.
  - ii) Marketing and advertising of mediation.
  - iii) Confidentiality, privacy and reporting obligations.
  - iv) Neutrality and impartiality.
  - v) Fiduciary obligations.
  - vi) Supporting fairness and equity in mediation.
  - vii) Withdrawal from and termination of the mediation process.

## **8 Inter-professional Relations**

Mediators should respect the relationships with professional advisers, other mediators and experts which complement their practice of mediation.
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- 1) Mediators should promote cooperation with other professionals and encourage clients to use other professional resources when appropriate.
- 2) When disputes involve more than one facilitative or other decision-making process, mediators will keep themselves informed and keep other professional colleagues informed about the processes taking place. Mediators will consider and respond to any consultative responsibilities that extend beyond more narrowly defined obligations to facilitate a process directly between the disputants.

## 9 Procedural Fairness

A mediator will conduct the mediation process in a procedurally fair manner.

- 1) A mediator will support the participants to reach any agreement freely, voluntarily, without undue influence, and on the basis of informed consent.
- 2) The mediator will provide each participant with an opportunity to speak and to be heard in the mediation, and to articulate his or her own needs, interests and concerns.
- 3) If a mediator, after consultation with a participant, believes that a participant is unable or unwilling to participate in the process, the mediator may suspend or terminate the mediation process.
- 4) The mediator should encourage and support balanced negotiations and should understand how manipulative or intimidating negotiating tactics can be employed by participants.
- 5) To enable negotiations to proceed in a fair and orderly manner or for an agreement to be reached, if a participant needs either additional information or assistance, the mediator must ensure that participants have sufficient time and opportunity to access sources of advice or information.
- 6) Participants should be encouraged, where appropriate, to obtain independent professional advice or information.
- 7) It is a fundamental principle of the mediation process that competent and informed participants can reach an agreement which may differ from litigated outcomes. The mediator, however, has a duty to support the participants in assessing the feasibility and practicality of any proposed agreement in both the long and short term, in accordance with the participant's own subjective criteria of fairness, taking cultural differences and where appropriate, the interests of any vulnerable stakeholders into account.
- 8) The primary responsibility for the resolution of a dispute rests with the participants. The mediator will not pressure participants into an agreement or make a substantive decision on behalf of any participant.

## 10 Information Provided by the Mediator

The mediator has no advisory or determinative role in regard to the content of the matter being mediated or its outcome. The mediator can advise upon and determine the mediation process that is used.

- 1) Consistent with the standards relating to impartiality and preserving participant self-determination, a mediator may, with the clearly informed consent of the participants, provide the participants with information that the mediator is qualified by training or experience to provide. Such information should be couched in general terms.
- 2) A mediator should only provide information within the limits of his or her qualifications and competence while conducting a mediation.
- 3) Mediators shall not explore or provide interpretations of behaviour or statements with the aim of providing assistance of a counselling nature nor should they provide legal advice (see ss5 below).
- 4) Where appropriate, for example, in some family, environmental and workplace disputes, the mediator has a responsibility to facilitate a discussion about the participants' awareness of the interests of others affected by the dispute, and by the proposed agreement, and to assist the participants to consider the separate and individual needs of other such persons.
- 5) If a mediator, upon request, uses a 'blended process' model, such as evaluative mediation or conciliation, this process must be the subject of clear consent normally through the use of a mediation or similar agreement.
- 6) Mediators will provide information about their specialist and relevant training, education and expertise to participants upon request.

## 11 Termination of the Mediation Process

The mediator may suspend or terminate a mediation process if continuation of the process might harm or prejudice one or more of the participants.

- 1) Mediators should be alert to situations where parties or their advisors seek to misuse the mediation process to achieve other ends such as:
  - a) delaying proceedings in the hope of reinforcing the continuation of an existing arrangement or prolong litigation or obtain other advantage; or
  - b) 'buying' time in order to dissipate or conceal assets; or
  - c) where, in the opinion of the mediator, one or both participants is in some other way acting in bad faith.
- 2) A mediator may suspend or terminate the mediation process if in the opinion of the mediator it is being used for a purpose other than a mutual attempt to arrive at resolution or its usefulness has in some other way been exhausted. Mediators should, where possible, provide reasonable notice to the participants.

- 3) The mediator may withdraw from the mediation process when any agreement is being reached by the participants that the mediator believes is unconscionable. If terminating or withdrawing from a mediation process, the mediator should assist the parties in assessing further process options for dealing with their dispute.

## 12 Charges for Services

The mediator should make explicit to parties all charges related to the practitioner's services and how they are calculated.

- 1) The mediator will explain any fees to be charged for the mediation process and any related costs. The mediator must also obtain agreement from the participants as to how any fees will be shared and the method of payment.
- 2) Any written agreement with the participants about the mediation process should include a description of any fee arrangements with the mediator.
- 3) A mediator will not base fees on the outcome of the mediation, but it is not unethical for a mediator to act pro bono or to leave to the discretion of the parties the payment of any fees.
- 4) If any retainer has been collected before mediation services have been rendered, any unearned fees should be returned promptly upon termination of the mediation process.

## 13 Making Public Statements and Promotion of Services

The mediator should ensure that public statements made by the mediator promoting business are accurate.

- 1) The purpose of public statements concerning mediation processes should be to:
  - a) educate the public about the process in order to help the public make informed judgments and choices; and
  - b) present the mediation process objectively, as one which seeks to empower participants directly and constitutes only one of several methods for arriving at an outcome.
- 2) Public communications should not mislead the public, misrepresent facts or contain any:
  - a) statements likely to mislead or deceive by making only a partial disclosure of relevant facts; or
  - b) statements intended or likely to create false or unjustified expectations of favourable results.
- 3) When advertising professional services, mediators should restrict themselves to matters which educate and inform the public. These could include the following information to describe the mediator and the services offered, such as: name, address, telephone and facsimile numbers, email address, office hours, relevant academic degree(s), specialist subject expertise, relevant training and experience in the

mediation process, mediation qualifications such as certifications and accreditations, appropriate professional affiliations and membership status, advantages of a mediation process, and any additional relevant or important consumer information. In particular:

- a) mediators should refrain from promises and guarantees of results. However, a mediator may report on de-identified information about any evaluation of their services that might assist parties to better understand the mediation process; and
  - b) mediators must accurately represent their qualifications and their relevance and significance.
- 4) Mediators should, where possible, encourage and/or participate in research that can support further professional and public education.
  - 5) Mediators can promote their accreditation or additional accreditation and membership under this system.