

AUSTRALIAN NATIONAL MEDIATOR STANDARDS

APPROVAL STANDARDS

FOR MEDIATORS SEEKING APPROVAL UNDER THE
NATIONAL MEDIATOR ACCREDITATION SYSTEM

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Approval Standards

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.