

Mediation standards in Australia - uncovering what actually happens

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Given the confidential nature of mediation, it is a rare set of circumstances that allow us to catch a glimpse into the mediator's craft. The current review of the professional standards governing Australia's accredited mediators provides one such opportunity. The review seeks, to the extent permissible, to uncover what practitioners are actually doing, including the extent to which their knowledge and skills change with experience and in response to the various contexts in which they practise.

What is being reviewed?

After several years of discussion and community consultation, in 2008 a voluntary National Mediator Accreditation System (NMAS) was adopted in Australia. It comprises a set of Practice Standards which specify the minimum practice and competency requirements of a NMAS accredited mediator and a set of Approval Standards which specify the training, assessment, personal qualities and experience required for renewal of accreditation. The system also sets out the qualifications required of Recognised Mediator Accreditation Bodies (RMABs) in order to accredit mediators in accordance with the NMAS. The NMAS was last reviewed in 2015.

The current review

Last year the Mediator Standards Board (MSB), which oversees the system, engaged Danielle Hutchinson and Emma-May Litchfield of Resolution Resources (RR) to lead the NMAS Review 2020-21 in order to evaluate the effectiveness of the NMAS and consider what changes and additions need to be made.

Drawing on well-established techniques from the field of education and psychometrics, RR has adopted a collaborative and data-driven approach. The Australian DR community can therefore feel confident that any recommendations arising out of the review are evidence-based, informed by expert practitioners and reflect the variety of processes and contexts in which practitioners typically operate.

The NMAS Review 2020-21 Process

The process provides a number of opportunities for interested stakeholders to contribute. In particular, it includes widespread consultation involving reference groups, workshops and surveys amongst MSB members, RMABs, training organisations, mediators, community groups, professional associations and other experts in the field. Information collected from these events will be subject to rigorous data analysis to identify a range of patterns including the way that practice may evolve with experience or as it is applied in different contexts. This type of psychometric analysis, though well-established in other disciplines, is not typically used in the dispute resolution sector. This presents an exciting opportunity for the MSB, which is expected to consider the recommendations in mid-2021.

Reference groups

In the first stage, five Reference Groups sought to identify areas for possible amendment to the current standards in relation to First Nations Mediators; Diversity and Inclusion; MSB Member Organisations (including RMABs and training organisations); Non-NMAS Processes (including conciliation, family dispute resolution, hybrid processes and restorative practice); and Institutions with an interest in NMAS (including courts/tribunals, higher education and institutional dispute systems).

Based on my interest in the role of the mediator in hybrid processes such as med-arb and arb-med-arb, I was invited to contribute my thoughts to the Non-NMAS Processes Reference Group. I worked with fellow contributors to identify areas within the NMAS which might address the practice of "switching hats" whereby the same person may act as both mediator and arbitrator in the same dispute, without jeopardising their impartiality as mediator or the enforceability of any arbitral award. An example of the kind of problems that can arise in this area is [here](#).

Workshops

The second, recently completed, stage involved a series of day-long virtual Workshops. Participants, of which I was privileged to be one, represented a cross-section of the mediation community. The object was to flesh out the work done in the Reference Groups. The key focus areas were Professional Knowledge, Practitioner Skills, Professional Engagement and Professional Ethics and Responsibilities.

Key to our dialogue and work for the day was shifting our focus beyond the minimum threshold for accreditation, a perspective which tends to produce a compliance mindset. Instead, participants were asked to contemplate and articulate the distinguishing features of mediator practice as typically manifested in those who are newly NMAS accredited, those who are proficient and those who would be considered expert.

These levels of practitioner sophistication were further considered in the differing contexts of conciliation, family dispute resolution, court or tribunal annexed mediation, restorative practice, hybrids and diversity.

The rationale for considering varying degrees of practice together with processes which have historically fallen outside the NMAS is to enable the development of a standards-referenced framework which identifies the extent to which knowledge, skills, values and obligations may be common across processes and contexts. This also means that processes and contexts requiring specific knowledge, skills or expertise can also be properly recognised.

This way of thinking about mediator practice is difficult. This is especially so for the expert, who must bring to consciousness elements of their craft that have long since become intuitive. With this in mind, RR developed a suite of [pre-workshop materials](#) to help us orient our thinking towards this new way of reflecting on and conceptualizing the evolution of one's practice. The materials included sample scales of mediator knowledge, skills and attitudes and very useful guidelines for describing quality.

Surveys

The next step in the process is to synthesise the information generated via the reference groups and the workshops to inform the development of the NMAS Review Survey. This survey will be the main instrument for consultation and will be open to all interested stakeholders within the Australian DR community in mid-2021.

The data collected via the survey will then be analysed, using a range of psychometric techniques. The findings from this analysis will form the basis of the recommendations to the MSB.

In this way, every person who completes the survey will play a vital part in the NMAS Review 2020-21 and lend their voice to the future of dispute resolution in Australia.