

---

Australian National Mediator  
Accreditation System

Report on Project

---

PROFESSOR TANIA SOURDIN

PREPARED SEPTEMBER 2007  
AMENDED NOVEMBER 2008



## Table of Contents

Introduction .....	4
The Process .....	4
The Outcomes .....	6
Differing Views .....	7
What are Standards? .....	10
Practical Implementation .....	12
Future Issues and Implementation .....	13
The Role of Recognised Mediator Accreditation Bodies (RMABs).....	13
An Implementation Body.....	14
The National Mediator Accreditation Committee .....	15
Appendix A.....	18
WADRA National Mediators Standards Accreditation Reference Group .....	18
Appendix B.....	19
Attendees, Practitioner Forums: National Mediator Accreditation Standards ....	19
Appendix C.....	22
Submissions.....	22
Appendix D.....	23
Attendees, NADRAC Research Forum, La Trobe University, 14-15 July 2007 .	23
Appendix E.....	27
Report to the 8 <sup>th</sup> National Mediation Conference in Hobart in May 2006 on the National Mediator Accreditation System .....	27
Appendix F.....	28
Revised Standards Document.....	28

## 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 they are operating in.

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 Proposal at the National Mediation Conference received widespread support.

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 (eg 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 Summary of Responses document – 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.

On 9 July 2007, the Draft Standards documents were released for consultation. On 13 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 sent out. 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.

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 document.

## 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 supportive of 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 minimums 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 costs 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 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 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 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, 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 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 that the current regulation of mediation in Australia is marked by a degree of fragmentation, duplication and confusion. This is a reflection of the disparate nature of the practice itself, and of the fact that the application of mediation in disputes is a relatively recent phenomenon and as such, is undergoing rapid evolution. As noted previously, mediation is not 'owned' by a particular profession, but the sector draws its practitioners from a number of disciplines, each of which may be regulated by its own professional association. 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>1</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 individual community 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. Service users do not have access to a standard complaints procedure nor service providers to comprehensive safeguards relating to immunity or admissibility of evidence.

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 code of conduct – 'Ethical Standards for Mediators'.<sup>2</sup> This Code provides a 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 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 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 New South Wales,

---

<sup>1</sup> T Sourdin, (2002) *Alternative Dispute Resolution*, Law Book Company, 2005, p. 178.

<sup>2</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).

a practitioner may obtain specialist accreditation as a mediator or family law practitioner).

Leading Edge Dispute Resolvers (LEADR)<sup>3</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 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 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

---

<sup>3</sup> See <<http://www.leadr.com.au>> (Accessed 13 September 2007)

- 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>4</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 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>5</sup> Nevertheless, the complex and serious nature of mediation tasks and of the nature of conflict with which practitioners work, demands 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>6</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>7</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>8</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>9</sup>

NADRAC also notes that standards can be expressed in a variety of ways, including: codes of practice, benchmarks, guidelines, models, exemplars, service

---

<sup>4</sup> See <http://www.ag.gov.au/fdrproviders> (Accessed 18 September 2007).

<sup>5</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>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 31.

<sup>7</sup> C Pou, *Mediator Quality Assurance: A Report to the Maryland Mediator Quality Assurance Oversight Committee*, Feb 2002, p 1.

<sup>8</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>9</sup> National Alternative Dispute Resolution Advisory Council, *Report to the Commonwealth Attorney-General: A Framework for ADR Standards*, April 2001, p. 10.

charters, credentials, competencies and capabilities, as well as criteria for approval, certification, selection, endorsement or accreditation.<sup>10</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>11</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>12</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

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>13</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>14</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>15</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

<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> This approach was taken by NADRAC..

<sup>12</sup> NADRAC, National Alternative Dispute Resolution Advisory Council, *Report to the Commonwealth Attorney-General: A Framework for ADR Standards*, April 2001, p. 10.

<sup>13</sup> H Astor & C Chinkin *Dispute Resolution in Australia* Butterworths 1992, p. 31 at p. 226, citing Schneider.

<sup>14</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>15</sup> C Pou, *Mediator Quality Assurance: A Report to the Maryland Mediator Quality Assurance Oversight Committee*, Feb 2002, p. 4.

- 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>16</sup>

Standards developed by organisations, such as the United Kingdom College of Family Mediators (UKCFM),<sup>17</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), 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>18</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>19</sup> Rather than simply promoting public understanding of mediation, the Florida Rules for Certified and Court-Appointed Mediators<sup>20</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>21</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>22</sup>

In terms of the feedback received and the movement within 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.

---

<sup>16</sup> <<http://www.cdrc.net>> (Accessed 13 September 2007)

<sup>17</sup> <<http://www.ukcfm.co.uk>> (Accessed 13 September 2007)

<sup>18</sup> <<http://www.acrnet.org>> (Accessed 13 September 2007)

<sup>19</sup> <<http://www.attorneygeneral.jus.gov.on.ca>> (Accessed 13 September 2007)

<sup>20</sup> <<http://www.flcourts.org>> (Accessed 13 September 2007)

<sup>21</sup> <<http://www.fmc.ca>> (Accessed 13 September 2007)

<sup>22</sup> See <<http://www.nccusl.org>> (Accessed 13 September 2007)

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

## 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.

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 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 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 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.

It is 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.

NADRAC's role would 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 body would have an appropriate**

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

**The Committee will also be able to**

- 1. amend standards,**
- 2. develop standards**
- 3. consider additional RMAB recognition requirements and**
- 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

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, 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.

**Members can only opt to take membership under one category of membership. The membership shall consist of the following:**

- 1. One representative of any Recognised Mediator Accreditation Body (RMAB). If the RMAB has more than 100 mediators accredited under the National Mediator Accreditation System (NMAS), that RMAB is entitled to two representatives.**
- 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 or service organisation that is not an RMAB and has at least 30 mediator members accredited under the NMAS or is a national or state based representative organisation that has three or more 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) with ADR policy expertise as nominated by the Attorney-General or equivalent in each State or Territory.**

- 6. One representative from each of two organisations that use but do not provide mediation services**
- 7. Other such members as NMAC deems appropriate from time to time for membership and who may be co-opted for specific reasons.**



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, Solicitor
<b>Mediator Practitioner bodies</b>	Ms Fiona Hollier	CEO, LEADR
	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

## 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  
Mariyln 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 Insititue 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  
Woolongong 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**

Appendix F

**Revised Standards Document**



