

NATIONAL MEDIATOR ACCREDITATION COMMITTEE INAUGURAL MEETING

MINUTES

Wednesday 5 March 2008

Chifley's, Hotel Kurrajong, National Circuit, BARTON ACT 2600

Present

Representatives of NMAC Members and Observers (Attachment A)

NADRAC Council Members (Mediator Accreditation Committee):

Professor Nadja Alexander

Mr Ian Hanger QC

Justice Murray Kellam AO

Dr Gaye Sculthorpe

Mr Warwick Soden

Professor Tania Sourdin

Mr John Spender QC

Ms Lynn Stephen

NADRAC Secretariat:

Ms Serena Beresford-Wylie

Ms Farhana Masih

Ms Alison McLennan

Ms Ruba Rashid

The meeting was opened by the Honourable Justice Murray Kellam, current Chair of NADRAC. Justice Kellam welcomed the NMAC members and outlined his hopes for the body that NMAC will establish. He introduced the meeting's facilitator, Professor Nadja Alexander.

Professor Alexander explained the meeting arrangements and role of observers and distributed extra copies of the items for discussion.

She then presented a discussion of the events leading to this inaugural meeting, including grants and development of the standards. She noted that the standards are "living" standards which will need to be developed. Professor Alexander then explained the role of NADRAC. She outlined the role of NMAC, which needs to establish a National Mediator Standards Body (NMSB) within two years. This body will need constitution, funding and an appropriate structure.

Members were asked to identify under which membership criterion they fell. Each table was asked to now identify two or three expectations of today's meeting. These are listed below.

Expectations for today's meeting

- to form active operating committees
- to have clear direction
- to get a commitment for full engagement
- to clarify transitional arrangements
- hopes for the new system:
 - cost-effective
 - not bureaucratised, and
 - minimal barriers to entry
- to work out how to get a structure in place
- to work out how to track progress
- to work out how to deal with ongoing issues in transition
- clarity of role of NMAC
- unity of purpose
- to work out how to develop the committee structure
- to understand where we are now
- to work out how to get consensus in the future
- to understand the process of reporting to constituents
- to identify government issues, and
- to work out how to refine the issues

Professor Alexander summarised the discussion of expectations for the meeting. She distributed a list of 65 questions collected from NMAC members and NADRAC regarding the implementation process.

Professor Alexander suggested to the members that it would be useful to obtain an update from organisations about their experiences in implementing the new system. Members were asked to discuss at their tables:

- implementation updates, and
- issues for discussion, categorising these as urgent issues to be resolved today, medium-term issues or long-term issues.

Professor Alexander invited one person from each table to give a three-minute update from that table's implementation discussion. The members were asked how many organisations represented at the meeting were currently fully functioning RMABs? 'Fully functioning' was defined by Professor Tania Sourdin as an organisation that had gone over its process and refined its forms, adjusted the application forms to spell out the requirements for training, accreditation, experience qualification and continuing education, met the criteria in the standards to be an RMAB and was now issuing certificates/letters to accredit members. She noted that it is a self-recognition process.

Four members indicated that their organisations were currently fully functioning RMABs. (LEADR, Mediate Today, Australian Industrial Relations Commission and the Australian Mediation Association)

Members were at different stages of the implementation process. Some had questions about the system. Many were considering becoming an RMAB. Resource requirements, complaints handling and compliance with existing legislative obligations were of concern to some potential RMABs. Some organisations expected to make the decision as to whether to become an RMAB shortly. Some organisations were taking steps to make their training programmes compliant. For example, LEADR had revised its training program to create a 6 day program and had accredited about 70 members.

Members noted that different types of organisations will have different needs as to implementation, eg courts and commercial organisations. Some organisations indicated that they would become an RMAB but did not intend to provide training to members. One organisation intended to use an external contractor for training. Other organisations intended to become RMABs and provide training to their members. The Chartered Institute of Arbitrators had an international focus and considered the NMAC to be an entry-level or minimum scheme. Some bodies were observing developments with interest, but had not taken implementation action.

NMAC members identified the following issues as urgent and in need of resolution on today.

Urgent burning questions/issues to be resolved today

- How will such a large committee function effectively and efficiently?
- What needs to be done by the next meeting?
- How will the NMAC communicate between meetings?
- How to gain input and track progress?
- How will NMAC measure its success?

- Would it be useful for NMAC to appoint subcommittees to progress implementation of different areas? A core working group? A steering committee? A number of smaller committees? A reference group?
 - how many sub committees?
 - what should their realistic tasks be?
 - how are they going to be supported?
 - deadlines and accountability
- Cost of moving forward and compliance. Costs for consumers, mediators. *(Also identified as a longer-term issue)*
- NMAC procedures
 - Should decision-making be by consensus or voting?
- How can we ensure the integrity of NMAC in terms of the standards, accountability and ethics of RMABs?
 - How can we maintain the standards in the transition period?
- How will consumers locate RMABs?
- Where RMABs are training providers, what are the safeguards against ‘conflict of interest’ concerns where those RMABs are assessing Recognised Prior Learning?
- How to deal with the situation where there is no mutual recognition of accreditation?
- Rationalisation of RMABs throughout Australia
- Identify the roles/criteria
- Will Secretariat support will be necessary to support the work of NMAC or its committees?
- How do the NMAC standards relate to the family dispute resolution regime? Are they dual accreditation requirements? *(Also identified as a medium-term issue)*
- What legal status do the NMAC standards have? *(Also identified as a longer-term issue)*
 - Discipline.
 - Breach of contract.
 - Negligence.
- Questions about the blended model - breach of contract, loss of indemnity.
- Flexibility of education and training requirements-what counts towards training? *(Also identified as a longer-term issue)*

Medium-term questions/issues

- How can we ensure the effectiveness and quality of the System's various elements - training, assessment, complaints handling?
- Pooling/sharing of ideas, ie collaboration on forms/processes/assessments for training programs.
- How can we ensure the financial viability of the System so that all the eligible RMABs can afford to participate?
- RMAB consistency - As RMABs are self recognised, how will quality and national consistency in complaints handling by RMABs be addressed?
- Can RMABs subcontract the complaints mechanism? 10 members equals conflict of interest
- Is it true that some RMABs are saying that they only register applicants who have done their training with certain providers, particularly the RMAB itself?
 - If so this is totally repugnant to the letter and spirit of national accreditation and contrary to mutual recognition.
- Operational concerns relating to the National Mediator Accreditation Body.
- How to deal with confusion between family law accreditation and NMAC? Should there be uniformity?
- How to clarify reporting mechanisms?
- Need for clarity for constituents.
- How to fit new accreditation with old?
- How to discipline, review, appeal?
- How can individuals contribute to NMAC?
- Deadline for transition period?
- How to maintain as an industry regulated standard?
- Should there be a proposal for national legislation?

Longer term questions/issues

- Accreditation refers to the facilitative model.
- Is there any expectation that the present voluntary standards will become compulsory?
- What functions will the national mediator standards body have?
- National Mediator Standards Body-costs and funding. Who is going to pay and what will it cost?
 - funding for committee?
 - body from 2010?
 - membership (cost to members)
- Clarity about complaints handling

Other issues identified:

- Resources for RMABs, compliance costs.
- Legislation - how will community and privilege provisions work with NMAC?
- What is the degree of entrenchment of the standards? Many people are incurring costs based on the standards. Do we need only a simple majority to change the standards?
- Should we settle membership criteria before appointing subcommittees?
- Benchmarking – we need confidence that well benchmarked, then cross accreditation will follow. Cross accreditation is complex because there are training, mediator and continuing professional development issues.

Suggestions for committee structure

Professor Alexander noted that a lot of work was required on a voluntary basis before the Perth meeting in September. The NMAC needed to get a sense of who is interested in joining a subcommittee and what skills they can offer.

One member suggested NMAC could set up three subcommittees:

1. complaints - some bodies don't have a process
2. structure, purpose and constitution for NMAC/NMSB, and
3. transitional committee to look at processes - for RMABs and other matters.

Subcommittees which report to a working committee which makes recommendations for NMAC to decide on at the September meeting?

Final Plenary Session

After a coffee break members moved to new tables.

Professor Alexander listed on the whiteboard issues that had been identified for immediate discussion in the plenary session. The issues were:

1. What is NMAC's product/purpose?
1. Do we agree with the principle of mutual recognition?
2. Criteria for membership.
3. NMAC decision-making.
4. Working group structure. Here Professor Alexander wrote up some suggestions that had been made by members in relation to subcommittee structure.

1. Product/purpose

One member suggested that NMAC's purpose should be to establish a national body that oversees the system. He suggested that the purpose of the System is to serve the consumer by giving them confidence, to serve the process of mediation, to serve mediators by enhancing credibility and to serve mediator bodies. The consumer could be seen as the primary purpose and it was thought that this would make it easier to make decisions. **The members indicated general agreement with this approach.**

Another member suggested that the system should also serve the Attorney General's Department and the court system. Ensuring quality would also serve mediator's self interest.

2. Mutual recognition

One member suggested that the issue of mutual recognition is very important and goes beyond training to continuing professional development and other issues. Mutual recognition is necessary if it is to be a national system. Mutual recognition at a base level exists but recognition at a more expert level will be down the track.

Another member suggested that mutual recognition is a challenge for the transition period because RMABs which are self-recognised need confidence that other RMABs are interpreting the standards in the same way. To establish this confidence, NMAC should be firm regarding the standards.

Yet another member stated that organisations should not second-guess each other and need to be trusting in order to promote a national system. Professor Tania Sourdin stated that while other systems have rogues, mediation is a dedicated industry and everyone has the intention of doing well. Trust is important.

Some members queried the meaning of mutual recognition.

A member suggested that mutual recognition would be more relevant at the non-voluntary stage. Because the members are different organisations with different aims, they may not understand what they are to be recognising.

Two different issues emerged in this discussion:

- mutual recognition of mediators, and
- mutual recognition of accreditation of trainers, ie should organisations recognise and employ trainers who are accredited with other organisations?

Professor Sourdin suggested that mutual recognition of trainers should occur.

Generally members agreed with the principle of mutual recognition. At this stage, however, it was felt that there should be no obligation for an organisation to recognise mediators simply because they are accredited by other organisations. Each RMAB has an obligation to be satisfied that mediators meet the standards.

3. Membership criteria

Professor Tania Sourdin noted that a lot of organisations are potential RMABs. NMAC needs to be fair regarding this and it is appropriate to have a transitional period. However, for future meetings should NMAC insist that only actual RMABs can be members under that criterion? Her view was that it should.

A member suggested that settling the membership criteria is important because voting rights attach to membership. It was felt that while goal should be consensus decision-making but if consensus can't be reached then membership criteria become important.

Professor Alexander referred to page 5 of the meeting papers where the membership criteria are set out. She said that NADRAC's view was that organisations should choose one criterion. **The members agreed that organisations must choose one criterion under which they send representatives. It was later clarified that organisations falling under multiple criteria may only send one representative under one criterion, though RMABs with more than 100 members may send two representatives under criterion 1.**

Professor Alexander asked members to consider how strictly RMABs should be defined for the next meeting.

One member suggested that clarity is needed for the transitional period. Another member noticed that the decision as to whether to become an RMAB depends on resources. Also some organisations won't have a general meeting until after the next NMAC meeting, affecting their ability to decide to become an RMAB. Another member responded that organisations can call a special meeting for this purpose. Professor Sourdin noted that clarity regarding organisations' intention into the future was required

One member suggested that a constitutional commitment could make the decision long term.

It was also suggested that perhaps RMABs should be registered with NADRAC by a certain time.

Professor Alexander suggested a deadline for RMABs to be fully functional in order to qualify for membership under Criterion 1. All but two members agreed on a deadline of 1 September.

However it was then considered that 1 September may leave insufficient time to make arrangements for the next meeting (planned for early September in conjunction with the Perth NMC). 1 August was suggested as an alternative deadline.

Members noted that organisations that qualified after this date could still come to the next meeting under other criteria if applicable, or to the following meeting.

Professor Sourdin clarified that 'RMAB' is a defined term and a declaration of intention is not sufficient to make an organisation an RMAB, all the relevant criteria must be met.

The members agreed that the deadline is 1 August for RMABs to be fully functional in order to qualify to send representatives to the September meeting. Non fully functional organisations could send representatives as observers or under other membership criteria if applicable.

It was noted that Criterion 3 is ambiguous in its reference to 'professional organisations'. Criterion 4 is also very wide and ambiguous. The question was asked: If an organisation that provides mediation services is not sufficiently committed to the NMAS to become an RMAB, why should they be allowed membership of NMAC?

It was agreed that a working group dealing with purpose and related issues could consider this.

4. NMAC decision making process

Professor Alexander outlined options:

1. to delegate substantive decision-making to a working group,
2. to make principled decisions now,
3. to delegate to a group who will come back to NMAC with clear recommendations for ratification.

One member suggested that agreeing to be a member of NMAC was premature in the absence of a constitution, therefore the August date is too early. The members generally agreed that the deadline of 1 August should stand.

The members agreed to leave the details of the voting procedure to be determined at the next NMAC meeting.

5. Working group structure

Professor Alexander suggested four working groups based on the members' earlier discussion of issues that needed attention:

1. resources.
2. purpose, constitution, structure of NMAC / NMSB
3. practice and compliance (transitional and beyond), and

4. complaints handling.

She suggested NADRAC could liaise with people interested in joining working groups in order to set up those groups. She emphasised that this joining a working group will require both time and skill.

The members suggested that people needed a chance to think about this and nominate by e-mail or letter later.

Justice Kellam suggested that NADRAC will need to be on any working group to promote continuity.

A member suggested that the members need briefing from NADRAC regarding the tasks and scope of the working groups. It was noted that the NMSB needs to be self funding because Commonwealth funding may not be available.

The members agreed that only one member from each organisation could be on a working group.

It was agreed that members could either write their interest in joining a working group on the back of their name tag or a business card and submit this to Professor Alexander or e-mail NADRAC within seven days to indicate their interest in joining a working group.

The members agreed in principle to establish the working groups. However, members also agreed that given the limited time available to consider the functions and composition of the working groups, NADRAC should consider the issue and advise NMAC on appropriate working groups and their composition. NADRAC agreed to take on this task.

It was noted by members that larger groups are less workable.

Professor Alexander then closed the meeting and thanked the members for attending.

Justice Kellam also thanked the members and indicated that it had been a very productive meeting. He thanked Professor Alexander for facilitating the meeting.

ATTACHMENT A - ATTENDEES AT THE NATIONAL MEDIATOR ACCREDITATION COMMITTEE MEETING

5 MARCH 2008

Representatives

1	The Hon	Acton	Jennifer	Australian Industrial Relations Commission
2	Ms	Bowne SC	Angela	NSW Bar Association
3	Ms	Boyle	Alysoun	Creative Resolutions (ACT) P/L
4	Ms	Brass	Tanya	Relationships Australia Canberra and Region
5	Mr	Campbell	Callum	Australian Mediation Association
6	Ms	Castile	Paula	ADRA
7	Mr	Crowley	Paul	Community Justice Centre NSW
8	Ms	Culliver	Maryanne	Citizens Advice Bureau of WA Inc
9	Ms	Daley	Geraldine	Law Society of New South Wales
10	Ms	Dey	Karen	Community Justice Centre NT
11	Ms	Doyle	Andrea	Queensland Department of Justice and Attorney-General
12	Ms	Duncombe	Sue	Mawul Rom Association
13	Ms	Gaffney	Kay	Queensland Department of Justice and Attorney-General
14	Ms	Grace	Carole	VADR
15	Ms	Halsmith	Margaret	LEADR
16	Dr	Hardy	Samantha	University of Queensland
17	Ms	Harrison	Elaine	Legal Aid NSW

ATTACHMENT A - ATTENDEES AT THE NATIONAL MEDIATOR ACCREDITATION COMMITTEE MEETING**5 MARCH 2008**

18	Ms	Heeley	Jillian	Legal Aid Commission ACT
19	Ms	Hollier	Fiona	LEADR
20	Mr	Holst	David	Mediate Today Pty Limited
21	Ms	Huntersmith	Danielle	The Victorian Bar
22	Mr	Irving	Ian	Federal Court of Australia
23	Ms	Johnson	Katherine	ADRA
24	Ms	Keys	Bianca	The Accord Group
25	Ms	Kirkegaard	Ainslie	Queensland Department of Justice and Attorney-General
26	Mr	Lancken	Steve	The Trillium Group
27	Ms	Leigh	Kathy	Commonwealth Attorney-General's Department
28	Ms	Mackay	Merrin	Department of Justice (Tasmania)
29	Ms	Mann	Natasha	NSW Attorney General's Department
30	Ms	Marks	Helen	Department of Defence
31	Ms	Matthews	Emma	Australian Commercial Disputes Centre
32	Mr	McFarlane	Tim	Law Institute of Victoria
33	Mr	Minus	Derek	Chartered Institute of Arbitrators
34	Mr	Myers	Paul	Victorian Department of Justice
35	Mr	Nankivell	Ross	The Victorian Bar

ATTACHMENT A - ATTENDEES AT THE NATIONAL MEDIATOR ACCREDITATION COMMITTEE MEETING**5 MARCH 2008**

36	Dr	O'Brien	Angela	IAMA
37	Mr	O'Connor	Dan	Queensland Bar Association
38	Ms	Petrone	Franca	Law Society of SA
39	Ms	Pirc	Gabriela	Community Justice Centre NSW
40	Mr	Scott	Phil	Queensland Law Society
41	Dr	Sculthorpe	Gaye	National Native Title Tribunal
42	Ms	Simpson	Elize	Dispute Settlement Centre of Victoria
43	Ms	Spyrides	Katrina	Conflict Resolution Service
44	Mr	Theobald	Philip	AIFLAM
45	Professor	Wade	John	Bond University
46	Ms	Walker	Mary	Law Council of Australia
47	Mr	Whelan	Michael	IAMA

Observers

48	Mr	Alter	Marcel	Law Institute of Victoria
49	Ms	Ettinger	Geri	AAT
50	Mr	Johnson	Sean	James Cook University
51	Mr	Jolson QC	Henry	The Victorian Bar
52	Ms	Knight	Naomi	Family Relationships Services Australia

ATTACHMENT A - ATTENDEES AT THE NATIONAL MEDIATOR ACCREDITATION COMMITTEE MEETING

5 MARCH 2008

53	Ms	Polgar	Mandy	Office of the Workplace Ombudsman
54	Ms	Price	Kate	Conflict Resolution Service
55	Ms	Sordo	Bridget	Law Society of New South Wales