

## **A NEW ACCREDITATION SYSTEM FAMILY DISPUTE RESOLUTION PRACTITIONERS**

NADRAC is pleased to provide input into the new accreditation system for family dispute resolution practitioners.

Questions raised in the discussion paper include standards, accreditation, registration and complaints procedures. These are the issues that have, over the years, created tension between those who support a deregulated or self-regulated workforce and those who support increased regulation.

Irrespective of which system is developed it is clear that there is a need to protect consumers from incompetent service providers, particularly in light of the increased growth in the market for family dispute resolution practitioners.

In this submission, NADRAC proposes some additional options that may be worthwhile to consider and also comments upon each of the issue areas. The main thrust of the additional options relate to how the framework might be implemented and also are directed at ensuring that the pool of practitioners who will practice in this area are not reduced. In this regard NADRAC would suggest using the Vocational Graduate Diploma Framework to ensure that practitioners have the requisite skills and competencies. NADRAC suggests an overarching framework approach (see below).

Taking into account the factors identified in the Discussion Paper, NADRAC suggests matters could be more clearly articulated in the Framework as follows:

### **A General Framework**

1. A family dispute resolution practitioner operates under the *Family Law Act* as an impartial third party and manages processes aimed at maximising participant self-determination while recognising the interests of others, especially children, directly affected by the dispute. The practitioner must have personal qualities and sufficient life, social and work experience to conduct the process independently and in a professional manner. The practitioner must provide evidence of:
  - good character (Section 2);
  - an undertaking to comply with ongoing practice standards and compliance with legislative and approval requirements (Section 3);
  - membership of an appropriate association or organisation that has appropriate ethical requirements, complaints and disciplinary processes as well as ongoing professional support (Section 4);
  - requisite qualifications to ensure that they are competent to conduct family dispute resolution processes (See Qualifications below).

2. With respect to the requirement to be of ‘good character’, practitioners must provide evidence that they are regarded as an honest and fair person by two members of their community, and that they are regarded as an appropriate person to be a family dispute resolution practitioner by reference to their life, social and work experience. Family dispute resolution practitioners must also meet the requirements of a police check in the State or States or Territory in which they practise. They must be without any serious prior conviction, and without any impairment that could influence their capacity to discharge their obligations in a competent, honest and appropriate manner. They must also satisfy the approving body that they do not come into the category of a ‘prohibited person’ (or its equivalent) as defined in their State or Territory of Australia.
3. The family dispute resolution practitioner must swear an oath or affirmation undertaking to comply with legislation, practice standards and approval requirements. The family dispute resolution practitioner must be a current member of a professional organisation, funded agency or association that has the following characteristics:
  - Not less than ten family dispute resolution practitioner members
  - Provides or can provide access to ongoing professional development and debriefing programs
  - A complaints system that meets Benchmarks for Industry-based Customer Dispute Resolution
  - An applicable code of ethics.

NADRAC is of the opinion that if accreditation included a requirement that practitioners had access to a complaints system, industry would develop the capacity to meet the demand this would create over the period to the end of June 2009.

4. A family dispute resolution practitioner may seek to be registered with the Attorney-General’s Department by providing the following:
    - A. A letter from their professional organisation, funded agency or association that:
      - (a) The organisation complies with the matters set out in paragraph 3 above
      - (b) That it has received and reviewed the information referred to in paragraph 2 above and is therefore an approving body
      - (c) That a responsible officer undertakes to notify the Attorney-General’s Department of any change in status (see para 2 above) or if any serious complaint has been received regarding the individual that could result in their removal from the Register.
      - (c) The individual meets the qualifications criteria set out below and has met any supervision requirements.
- and

- B. A letter from the individual indicating that they:
- (a) Undertake to comply with approval standards and to notify the Attorney-General's Department of any change in status that may impact upon their capacity to conduct a dispute resolution process in a professional manner.

## **B Qualifications**

1. A family dispute resolution practitioner must be able to demonstrate appropriate competence by reference to applicable practice standards, qualifications, training and experience. A family dispute resolution practitioner who provides information in the context of a family dispute resolution process must be competent to do so and possess the appropriate skills and expertise.
2. Ongoing approval as a family dispute resolution practitioner is contingent upon the practitioner meeting the practice standards and competencies detailed in any relevant practice standards.
3. After 1 July 2009, unless defined as 'Experience Qualified' (see below), a family dispute resolution practitioner must demonstrate to the approving body that he or she has completed:
  - i. an appropriate degree, or equivalent qualification in law, education, conflict resolution, health or social sciences from a university, or former college of advanced education, of at least three years equivalent full-time duration or from a VET approved organisation to a National Framework Level 6 standard; and
  - ii. have completed assessable training in the core areas set out in the Vocational Graduate Diploma in Family Dispute Resolution (see attachment B). The assessable training can be completed as part of (i) above or to the extent that this is not the case, the practitioner must have attended additional assessable training in those areas. The assessable training may be conducted by a TAFE, University or Registered Training Organisation; and
  - iii. Have relevant experience co-facilitating with an experienced family dispute practitioner. The amount of relevant experience will vary according to the background of the practitioner at the time that approval is sought. In general:
    - (a) Practitioners who have at least 40 hours experience or more facilitating in the area of family related conflict are not required to complete supervised co-facilitation.
    - (b) Practitioners who have experience working in family related conflict or experience working as a mediator in a non related area are required to complete 20 hours of supervised co-facilitation in the six months prior to seeking approval with an approved family dispute resolution practitioner. and

(c) Practitioners with more limited experience are required to complete 30 hours of supervised co-facilitation in the 12 months prior to seeking approval with an approved family facilitative dispute practitioner. In addition such practitioners must, following approval, co-facilitate for a period of 15 hours with an experienced family facilitative dispute practitioner prior to facilitating on a solo basis.

#### 4. 'Experience Qualified' Practitioners

- A. Experience qualified' practitioners must be assessed by no less than three approved family dispute resolution practitioners as demonstrating a level of competence by referring to the competencies expressed in the Vocational Graduate Diploma in Family Law Mediation to ensure he/she is appropriate for the role of a family dispute resolution practitioner in the community, and the practitioner is either:
- from 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 gaining tertiary or similar qualifications; or
  - has worked for not less than 12 months within the last three years in a family relationship services role similar to that of a family dispute resolution practitioner (by reference to a counselling or facilitative practice); or
  - has worked as a Family and Child Mediator, Counsellor or Conciliator in an FRSP-approved agency for at least 12 months immediately prior to entering private practice.

The Framework that is suggested above deals with many of the issues that have been raised in the Discussion Paper. Other specific comments in respect of each issue are located below:

##### **Issue 1**

The establishment of an internet based registration system managed by the Attorney-General's Department would be an effective way of ensuring access to information to locate an accredited family dispute practitioner. However, this system would need to include access for those who do not have internet capacity as well as those from culturally and linguistically diverse families. It is suggested that a 'hotline' approach should also be used to support the Register.

It is also suggested that a simple certificate confirming the practitioners' registration should be issued following the process outlined above.

The database could also identify those family dispute resolution practitioners who are registered and who have completed their supervised practice (and are therefore accredited) and those who are registered and who still need to complete the required supervised practice to be accredited (see Issue 5).

## Issue 2

NADRAC has recognized in its suggested framework above that individuals apply to be registered with the support of a professional organization or an employer organization (see above). Organisations will therefore be required to monitor compliance and will become an 'approving body.' The organizations that could do this would include existing professional organizations as well as funded organizations (Federal, State or other).

## Issue 3

If the approach that is outlined above is adopted, then this does not become an issue. It will be the responsibility of the organization to indicate that it complies. NADRAC would estimate that less than 20 organisations nationally would seek to certify in this way.

## Issue 4

NADRAC proposes that the existing arrangements continue until 2009 (although they consider that there is merit in using a 1 July 2008 revised date). All existing and potential new family dispute resolution practitioners need to be able to demonstrate training and competence in the skill units. **However recognition of prior learning and existing qualifications will be essential to avoid creating disincentives for existing practitioners to continue to work in the field. The recognition process needs to be simple and at low or no cost to existing practitioners. In line with this NADRAC has recommended a broader recognition process.**

Practitioners who already meet Regulation 83 should be able to demonstrate compliance without undergoing additional training and therefore meet the requirements for the Vocational Graduate Diploma in Family Dispute Resolution. The majority of dispute resolution training programs, especially many post graduate qualifications offered by universities, are more than adequate to cover the material contained in the Vocational Graduate Diploma.

Where there are significant gaps in education or training these could be addressed by practitioners undertaking the necessary units. Two areas of particular importance are Family Law and domestic violence.

While the Family Law changes are designed to keep parents away from the legal system, training and education in Family Law will be important because parenting plans developed with family dispute resolution practitioners will have potentially significant legal consequences.

In addition NADRAC recommends that existing and new Family Dispute Practitioners are able to provide parents with information about the Child Support Scheme and Centrelink as these systems have significant implications for decisions made by parents regarding financial support for their children.

Screening and ongoing assessment for suitability of mediation is particularly relevant to Family Dispute Resolution practice. There are many who are concerned about the adverse effects of parents being required to mediate where there is violence and abuse. Public confidence in Family Dispute Resolution services will continue to depend on practitioners being able to demonstrate their ability to effectively assess and screen clients for violence and abuse.

NADRAC recommends that existing and new Family Dispute Practitioners have training in identifying domestic violence in order to assess and respond appropriately to clients at all stages of the process. Practitioners also need the ability to differentiate between family conflict and situations where one party's capacity to negotiate is diminished by fear of violence or abuse.

In addition, NADRAC has recommended some changes in terminology in respect of the 'good character' and other issues.

### **Issue 5**

Supervised practice is essential to ensure Family Dispute Resolution Practitioners are suitably qualified to provide high quality services.

Currently there are significant difficulties for Family Dispute Practitioners who wish to undertake supervised practice. This is due to a shortage of suitably qualified supervisors and to the cost of supervision. On the job supervision offers a cost effective solution to these barriers.

Registered practitioners who have and who have not completed their supervised practice would be identified could be identified on the database (see Issue 1).

NADRAC would also be interested in discussing any initiative to build requirements for supervised practice into funding agreements made with Family Relationship Centres.

### **Issue 6**

A minimum of 30 hours supervised practice in the twelve months following the completion of training would ensure practitioners have the necessary skills to provide family dispute resolution.

Practitioners who have completed the required training and supervised practice will need ongoing supervision and assessment to maintain the skills necessary to provide families with high quality dispute resolution services.

NADRAC considers that a tiered approach should be adopted recognizing that practitioners who work outside the family area may seek to work in this area.

## **Issue 7**

NADRAC has identified relevant points in the framework suggested above.

## **Issue 8**

When the Regulation 83 was enacted education and training were not defined in order to allow for a broad range of options for practitioners to gain professional development.

Barriers to practitioners completing the twelve hours training each year and requiring no more than twelve months to lapse between periods of training are cost and availability, especially for those in rural and remote locations.

NADRAC supports a broad approach to ongoing education and training for family dispute resolution practitioners. When Professor Hilary Astor was Chair of NADRAC there was recognition that attendance at ADR/Mediation conferences, subscription to ADR journals, published ADR articles, as well as participation in training programs conducted by a recognized trainer provider were acceptable alternatives..

There has however, been a great deal of confusion surrounding this matter, therefore it will be important to clearly define what constitutes valid education and training and to identify recognized trainers and training programs. The NSW Law Society's Mandatory Continuing Legal Education system is an example of a more clearly defined professional development system.<sup>1</sup>

## **Issue 9**

In order to maintain accreditation practitioners could, for example, be required to complete a minimum of 20 hours practice per annum (typically this would include one hour pre-mediation sessions and two hour joint mediation sessions and perhaps some time for preparation, debriefing and writing case notes and agreements).

## **Issue 10**

Organisations funded by FRSP could ensure that their practitioners comply with accreditation or registration requirements under the Accreditation Rules, however it will be necessary to introduce other mechanisms, such as that suggested in paragraph one on page 17 of the discussion paper, for other organizations and practitioners. The Framework suggested above identifies options however NADRAC considers that practice Standards need to be articulated in this area (See La Trobe's work in this area funded by the AG's department in 2004).

---

<sup>1</sup> See <http://www.lawsociety.com.au/page.asp?partID=354>

## Issue 11

The Annual statement confirming compliance and a statement confirming that practitioners no longer meet requirements of the Accreditation Rules should be adequate, however it may be difficult to ensure those who no longer comply inform the Attorney-General's Department. The framework above includes provisions to notify (practitioner and organization).

## Issue 12

It will be essential to include practice complaints such as duress, bias, breach of confidentiality, conflicts of interest) and exclude complaints about the outcome of the family dispute resolution process.

This goes to the heart of preserving the integrity of the dispute resolution process. It also raises the matter of family dispute resolution practitioners issuing certificates that identify whether the parties have made a "genuine effort" to resolve matters and that they participated in "good faith". The perception of being impartial and independence is threatened by the practitioner taking on a precariously judgmental role about the outcome of the process. As Tom Altobelli points out "... there is a real risk that public confidence in family dispute resolution may be undermined by certificates either being too readily issued, or too readily refused." (p. 149)<sup>2</sup>

The Framework above requires organizations to have a compliant complaints process. NADRAC suggests that this is appropriate at this stage given low levels of complaints. Compliance with the Australian Standard requires organisations to have accessible processes and requires reporting.

### *Australian and international standards*

There are a number of Australian Standards and reports that are relevant to complaints handling.<sup>3</sup> The Australian Standard suggested that effective complaints systems will have certain characteristics and more recent work in the area of complaints standards has focused on using complaints to enhance quality and to identify and manage risk. This additional focus can mean that there is a concentration on more advisory and investigatory processes. The

---

<sup>2</sup> Altobelli, T. (2006) 'A generational change in family dispute resolution in Australia' 17 ADRJ 140.

<sup>3</sup> These include: Consumer Affairs Division, Department of Treasury, Industry Self Regulation in Consumer Markets (2000); Consumer Affairs Division, Department of Industry, Science and Tourism, Benchmarks for Industry Based Customer Dispute Resolution Schemes (1997); National Alternative Dispute Resolution Advisory Council (NADRAC), Alternative Dispute Resolution Definitions (AGPS, Canberra, 1997); Australian Standard 4608 – 1999, Australian Standard – Guide to the Prevention, Handling and Resolution of Disputes (1999); Australian Standard AS4269 – 1995, Australian Standard – Complaints Handling (1995). Note ASIC has indicated that it is reviewing this Standard: see also ASIC, Licensing: External and Internal Dispute Resolution Procedures (FSRB Policy Proposal Paper No 7, 2001).

Benchmarks for Industry – Based Customer Dispute Resolution in 1997 also articulate standards in this area.<sup>4</sup>

There are six benchmark areas:

Accessibility – The Scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.

Independence – The decision- making process and administration of the scheme are independent from scheme members

Fairness – The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which decisions are based.

Accountability – The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.

Efficiency – The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

Effectiveness – The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

In 2004, a new International Standard on complaints management was produced.<sup>5</sup> The International Standard sets out guiding principles such as visibility, accessibility, responsiveness, objectivity, charges, confidentiality, customer-focused approaches, accountability and continual improvement.<sup>6</sup>

The complaints handling framework (as with many existing models and those that operate in the dispute resolution sphere) refers to commitment, policy, responsibility and authority, planning and design, communication (including responsiveness, tracking and investigation), maintenance, improvement and auditing.<sup>7</sup> The International Standard – ISO 10002: 2004, *Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations* –

---

<sup>4</sup> See Consumer affairs Division, Department of Industry, Science and Tourism, Benchmarks for Industry-based Customer Dispute Resolution Schemes, August 1997, Canberra also at <http://www.selfregulation.gov.au/publications>. <10 June 2002>. These benchmarks were developed prior to the Standard on Dispute Resolution and draw upon the earlier standard on complaints handling.

<sup>5</sup> ISO 10002: 2004, Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations.

<sup>6</sup> ISO 10002: 2004, Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations, pp 3, 4.

<sup>7</sup> ISO 10002: 2004, Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations, pp 5–10.

does not, however, suggest what types of dispute resolution processes may be used for handling complaints and this approach is in line with international variations in complaint handling (in some cultures investigation and ‘determination’ rather than more facilitative dispute resolution may be the norm).

To be effective, a complaints management system should:

- promote policies and processes to deal with complaints as part of a continuous quality improvement program
- be accessible, easy to use and encourage feedback
- respond promptly and sensitively to complaints
- assess all complaints to determine appropriate responses
- resolve complaints and investigate in a complete and fair manner
- manage information so that relevant facts and decisions are communicated while confidentiality and personal privacy is protected
- record all complaints to review cases, identify trends and risks, and report on improvements
- use complaints to improve services and regularly evaluate the performance of the complaints system.<sup>8</sup>

Processes used to handle complaints can include:

- communication and negotiation
- investigation and advice
- referral and decision making.

### *2006 Australian Standard*

In 2006, Australian Standards published a new Australian Standard on complaints handling, *Customer Satisfaction – Guidelines for Complaints Handling in Organizations*.<sup>9</sup> This international standard was based largely on the ISO Standard of 2004. Also in 2006, the new Standards Australia handbook on complaints management was produced. In relation to initiating a complaints handling system, Standards Australia advocate commitment from the top, effective planning and design, sufficient resources and skills, complaints handling procedures, dispute prevention mechanisms, management responsibility and authority, visibility, accessibility and responsiveness. The Handbook, HB 229-2006 *The why and how of complaints handling*, states that an effective complaints handling system will increase brand loyalty, decrease negative publicity and assist in executing an effective compliance program.

---

<sup>8</sup> T Sourdin, *Alternative Dispute Resolution* (2<sup>nd</sup> Ed, Lawbook Co 2005)

<sup>9</sup> Standards Australia, *Australian Standard, Customer satisfaction – Guidelines for complaints handling in organizations*, AS ISO 10002-2006).

NADRAC considers that a compliance with the most recent standard would be sufficient to deal with complaints in this area.

**Issue 13**

See proposed framework – and information above.

**Issue 14**

It seems logical to use the same criteria as identified in the CSHISC Framework: an undergraduate or higher qualification in Psychology, Social Work, Law, Conflict Management, Dispute Resolution, Family Law Mediation or equivalent.

**Issue 15**

Grounds for refusal, suspension or cancellation of accreditation or registration as identified on page 21 of the discussion paper.

**Issue 16**

Penalties will be necessary, however is the current maximum penalty adequate to ensure compliance (particularly given the fees private practitioners are able to charge clients)?

**Issue 17**

Individual who make false and misleading statements about their status as an accredited person should be automatically removed from the proposed registration data; however the decision needs to be reviewable as stated on page 23 of the discussion paper.

**Issue 18**

Perhaps there needs to be a mechanism on the database that identifies these individuals as having made false and misleading statements about their status as an accredited and registered family dispute resolution practitioner.

---