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New Developments in the Organisation of ADR

National Mediator Accreditation System

Draft proposal for public consultation

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This draft proposal for a National Mediator Accreditation System is currently available for public consultation. The proposal itself contains information about its genesis, objectives and the nature of the consultation process. Interested members of the public are invited to make submissions on the proposal through the following website: www.mediationconference.com.au/html/Accreditation.html.

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Part I Background and procedure

There has been considerable debate in Australia over the last 15 years over issues of accreditation, training, standards, codes of conduct and professional organisations for mediators. The debate has been conducted in the literature, at conferences and consultations, within policy-advisory bodies such as NADRAC (National ADR Advisory Council), in commission reports, and in numerous other contexts.[1]

Throughout this document the term *'Accreditation'* is used to refer to the recognition of mediators in terms of the National Mediator Standard, and *'accreditation'* is used to refer to mediator recognition outside of this proposal; for example in terms of specific mediator programs, such as a community justice system.

This debate has occurred in the absence of any national mandatory system of mediator accreditation in Australia, and the existence of numerous individual accreditation systems. The actual appointment of mediators is often based on word of mouth 'accreditation' and the professional status of mediators, regardless of their formally-recognised competence in the mediation process and mediator techniques.

This document does not canvas, analyse and evaluate the well-known themes and arguments relating to accreditation issues as found in the literature, policy documents, reports and other sources. While there is an enormous diversity of views in relation to accreditation, the 'conventional wisdom' is that there should be some movement towards a uniform system of mediator accreditation in Australia. This view was reflected in the decision of the Commonwealth Attorney-General's Department to make funds available to the National

The conventional view is reflected, inter alia, in NADRAC reports referred to in this work, in community responses to those reports, and in views expressed at the 2004 National Mediation Conference in Darwin.

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Mediation Conference Pty Ltd (NMC) for the development of a proposal for a national system of Mediator Accreditation in Australia.

The proposal in this paper is therefore based on the assumption that some form of uniform mediator accreditation is appropriate at this stage of Australian mediation history. The case has been made and it is time to develop a specific proposal. Against this background the paper puts forwards various structures, processes and options for achieving the goal. It attempts to propose a system which is simple, achievable and would obtain significant support from credible players in the mediation movement.

While simplicity is an admirable goal, complexity awaits at many turns.

Defining Accreditation

At its most basic level accreditation involves the formal recognition of individuals, organisations or programs in a particular profession, occupation or pursuit, in terms of specified objective standards relating to qualifications, competence and performance. Accreditation usually occurs in the context of organisational schemes designed to promote quality, standards and accountability among practitioners. It could apply to individual practitioners, to organisations which provide particular services, to specific service-providing programs, or to employers engaging practitioners in the area.

Similar terms to accreditation, with their own connotations, are registration, certification and licensing. The Family Law Regulations 1984 provide for a partial licensing system in the provision for 'approved mediators'.

Accreditation involves an initial assessment against objective criteria of individuals, programs or organisations in the light of particular information and evidence.[2] It usually also involves some degree of ongoing monitoring, and the removal of accreditation (or de-accreditation) where the criteria are no longer satisfied. Accreditation systems are often reinforced in the promotion of quality, standards and ethics by practice requirements relating to codes of conduct, service delivery, compliance mechanisms and complaints-handling systems.

Nature of consultation process

The facilitator was engaged by an ad hoc committee appointed by the National Mediation Conference Pty Ltd (NMC). The NMC selected a broadly-based committee to appoint a facilitator for this undertaking, to oversee the facilitation process, and to report back to the Attorney-General's Department. The committee comprises Helen Marks, Mary Walker, Warwick Soden, Scott Petterson, Sandra Boyle, Robert Crick, Franca Petrone, Bill Field, Gordon Tippett, Salli Browning and Karen Dey. The committee appointed Laurence Boulle to undertake the facilitation and report back. Neither the facilitator nor the committee has any decision-making authority in relation to accreditation issues. The budget for the initiative is approved by the committee from funds granted to the NMC by the Commonwealth Attorney-General for this purpose.

The objective of the facilitation process is to obtain consensus in the mediation community about accreditation issues. Here consensus refers neither to

unanimity on all issues, nor to bare majoritarianism, but to a process which allows all relevant views to be aired, which considers options and refines those options in relation to key issues, which increases understanding within the community, and which produces outcomes which are perceived as legitimate because of the participatory and transparent nature of the processes followed.

The facilitation process commenced with a literature and resource search; liaison with the committee in face-to-face meeting and through email and telephonic contacts; consultation with experts on facilitating group consensus; investigation of software options for capture and sorting of submissions; and drafting of several versions of this proposal with feedback from committee members.

Outcomes

The proposals emanating from the facilitation process will be submitted to the Attorney-General's Department, as the funder of the initiative, and to the NMC for discussion and approval by participants at the National Mediation Conference in Hobart from 3-5 May 2006.

Timetable

Mid-November 2005: Dissemination of Draft Proposal to all sectors of the Australian mediation community.

Mid-November 2005 to late January 2006: First Phase of Community Consultation Process during which electronic responses to the Draft Proposal can be submitted via the website.

Early February 2006: Redrafting of Accreditation Proposal in light of responses received during first consultation phase.

Mid-to Late February 2006: Second Phase of Community Consultation Process involving Public Forums in major centres attended by facilitator for consideration, discussion and refinement of proposal.

March 2006: Meeting between Facilitator and Committee and Final Drafting of Accreditation Proposal.

Mid-March 2006: Approval of Accreditation Proposal by Committee and Submission to the Attorney-General's Department.

May 2006: Consideration and Approval of Accreditation System at National Mediation Conference, Hobart.

National Mediator Accreditation System

DRAFT PROPOSAL FOR PUBLIC CONSULTATION

Part II Basic Accreditation proposal

Objectives

The main objectives of the National Mediator Accreditation System are the creation of a practical and credible system for the uniform recognition, certification or accreditation of mediators in Australia in order to improve mediator knowledge, skills and ethical standards, to promote quality of mediation practice, to serve and protect the needs of consumers of mediation services and provide accountability where they are not met, to enable mediators to gain external recognition of their skills, and to broaden the credibility and public acceptance of mediation.

A further objective of the scheme is to create greater consistency across different accreditation systems by providing some commonality in educational and training standards and competency assessment. While the proposed system is not comprehensive or compulsory, it would in the short term provide some entry level consistency for new mediators who chose to participate in it. This implies support by existing accreditation organisations of the new system.[3]

Defining factors

The specific features of this proposal are based on the following considerations:

- The Accreditation system should be perceived as legitimate by significant numbers of individuals and groups with interests in the practice and operation of mediation, including providers of mediation services, users of mediation, funding institutions and experts in the discipline
- The Accreditation system will initially be based on the collaborative involvement of all sectors of the mediation movement without any requirement for legislation or external regulation.
- The Accreditation system will initially accredit individual mediators, as opposed to mediation service-providers or specific mediation programs.
- The Accreditation system will involve as little new infrastructure as is possible. Where feasible, functions will be devolved to existing organisations, such as those which already offer extensive mediation education and training.[4] This follows the approach of the NADRAC Standards report which recommended a framework in which ADR service-providers develop their own standards which take account of the elements of a mediator Code of Conduct.[5] It is also aligned with those current arrangements in which government entities are able to approve specific organisations which in turn can accredit individual mediators.[6]
- The Accreditation system should promote consistency across mediation sectors, where this is possible, and allow for diversity where additional accreditation requirements are appropriate or already in existence.
- The proposed system should be seen, and evaluated, as an initial step in the ongoing development of Accreditation which could subsequently be developed into a more elaborate system.
- The Accreditation system should be transparent and accessible to both mediators and those using mediation services.
- The Accreditation system should incorporate objective requirements and fair procedures both for those seeking accreditation and re-accreditation and for Accredited mediators who are subject to complaints and disciplinary action.
- The Accreditation system should be compatible with relevant public policy embodied in legislation and with the assumptions and principles of the mediation process.
- The Accreditation system should be comparable with similar accreditation systems.
- The Accreditation system should be amenable to evaluation, review and adaptation over time.

It follows the guidelines of NADRAC in its Standards Paper; some accreditation systems, such as that in Austria, are legislatively-based. There may be support from certain stakeholders for some degree of state regulation or a mixture of external regulation and self-regulation. This proposal, however, is based on self-regulation. See Part V, S 3 below.

Mutual recognition is easier at the training and assessment levels first, while organisations could have different additional criteria for accreditation, depending on the context of their mediation practice.

Key proposal *That Australian mediators will be able to achieve the status of Mediators Accredited according to the National Mediation Standard if they satisfy the requirements referred to in the National Mediator Accreditation system.*	
Scope of Accreditation system *Applicable to mediators* The Accreditation system will apply only to mediators and mediation and not to other dispute resolution practitioners such as arbitrators, case appraisers or neutral evaluators providing advisory or determinative processes. Here the term 'mediation' is understood in terms of the NADRAC definition of the process.[7]	As this stage Accreditation is voluntary and does not involve mandatory licensing.The proposal does not deal with many of the potentially problematic definitional issues in the ADR field.
Voluntary system The Accreditation system will be voluntary and optional for those mediator practitioners who wish to hold themselves out as being accredited according to the National Mediation Standard.	It will not constitute a licensing system which would exclude those not accredited to the National Mediation Standard from holding themselves out as practising mediators. Most current accreditation systems in Australia are voluntary.
Initial stage of Accreditation The system will be of a basic nature in relation to the requirements for Accreditation and the consequences of Accreditation. As a first stage of Accreditation it may be replaced by a more extensive model in the future, involving features such as licensing, regulation and practice monopolies and additional levels or grades of Accreditation. It is, however, a stand-alone system which could endure in its own right, even if there is not another more extensive stage of Accreditation; it therefore makes no assumptions about future Accreditation developments.	A disadvantages of a system that is not voluntary is that it would require attention to the definition and scope of mediation so that it is distinguished from comparable processes such as conciliation, facilitation and counselling. A mandatory system would also require more rigorous attention to accreditation of practitioners involved in 'hybrid' dispute resolution processes, such as med-arb.
Single level of Accreditation The system provides for only one level of mediator Accreditation and leaves open the option of intermediate or advanced Accreditation being developed at future stages.	Some membership organisations have provisions for Basic and Advanced levels of accreditation.
Scope for additional accreditation The system allows for additional requirements to be prescribed for the individual accreditation systems established by legislation and regulations, or by membership organisations, service-providers and users of mediation such as courts and tribunals.	For example, the Family Law Regulations 1984 already have higher level requirements than proposed for the National Mediation Standard.
A professional association or peak body The Accreditation system does not depend on the establishment of a peak body, professional association or industry body for mediators.[8]	See Part III, below.
The Accreditation system may create impetus for a professional association or peak body but this option is beyond the terms of the current investigation and report.	There are well-established professional associations in the law, medicine, accounting and psychology, all regarded as independent 'professions'.
Infrastructure requirements Although the Accreditation system does not require the establishment of a professional association or peak body, it does necessitate consideration of some level of infrastructure to administer and support specific aspects of the system. The system requires the following functions to be exercised through appropriate structural arrangements and procedures: • The function of approving and supervising the bodies recognised as having the capacity to Accredit mediators (referred to here as the Recognition and Supervision of Mediator Accreditation function). • The function of dealing with, or overseeing the handling of complaints against, Accredited mediators and, where these are not resolved, of determining	

whether mediators are in breach of a Code of Conduct and, where appropriate, imposing sanctions (referred to here as the Feedback, Complaints and Discipline function). • The function of developing and maintaining an accurate national Register of Mediators Accredited according to the National Mediator Standard (referred to as the Register function). • The function of undertaking a future review and evaluation of the Accreditation system and, if appropriate, making recommendations for its adaptation (referred to as the Evaluation and Review function). Organisational options are suggested in Part III below for the performance of these functions and attention will be given to them during the consultation processes.	
Compliance Compliance with the Accreditation system will mainly occur through the Recognition and Supervision of Mediator Accreditation function and the Feedback, Complaints and Discipline function. Indirect compliance will occur through the role of Recognised Mediator Accreditation Bodies (RMABs), consumer choice, disclosure and publicity and other factors associated with reputation and voluntary compliance.	
Accrediting of mediators The National Mediator Accreditation System will result in the Accreditation of individual mediators according to the National Mediator Standard, and not in the accreditation of programs or service-providers.	
Recognised Mediator Accreditation Bodies Individuals will be certified as Accredited according to the National Mediation Standard (NMS) by Recognised Mediator Accreditation Bodies (RMABs).	This accords with the NADRAC view that there should be a system to approve organisations which accredit mediators.
RMABs will be those bodies whose education, training and assessment credentials have been approved from time to time through the Recognition and Supervision of Mediator Accreditation function.	Institutions such as universities, community organisations, member organisations and government agencies could all qualify as RMABs.
In order to be approved through the Recognition and Supervision of Mediator Accreditation system, institutions will have to provide standardised information on: • Their principal instructors and their relevant qualifications and experience as educators and mediators; • The assistant instructors, or coaches, and their qualifications and experience; • The ratio of instructors to trainees in education and training courses; • The duration and content of education and training courses; • The teaching and learning methodologies underlying the education and training courses; • Course manuals or workbooks, lists of books or reading requirements, and other prescribed materials; • The course program, indicating the topics and time spent dealing with the different aspects of knowledge, skills and ethics required by mediators; • The Code of Mediator Conduct used in the course as a basis for education and training on issues of mediator ethics and standards; • The methods of assessment used to examine the knowledge, skills and competence of trainees; • Assessment instruments used for assessing mediator skills and techniques; • The past involvement of the institution in mediator education and training; • Any other information which goes to establish the credentials of the institution as a mediator educational, training and assessment institution (for example course evaluations, testimonials, references, etc).	Initially there will be no requirement that the trainers are themselves accredited according to the NMS.

Recognition in terms of these criteria will be given for a period of xxx years and must be renewed after expiration of this period. Where a RMAB loses its recognition as an approved body, the status of the mediators it has Accredited will not be affected during the currency of their Accreditation.	See Part V S 9, below.
Additional responsibilities of Recognised Mediator Accreditation Bodies	
Besides the functions of educating, training and assessing prospective mediators, RMABs will provide the Continuing Professional Development required in terms of the National Mediator Accreditation System and will make information about mediators' involvement in these programs available for purposes of maintaining the Mediator Register.	
Admission to mediator Accreditation programs	
RMABs have the discretion as to which individuals are admitted to their mediator education, training and assessment programs.	Pre-requisites are required by some accreditation systems, for example under the Family Law Regulations 1984.
There will be no formal pre-requisites, such as tertiary qualifications or professional status, for entry into such programs.[9]	Accreditation will promote consistency in mediator standards by evaluating the demonstrated knowledge, skills and ethical understanding of proposed mediators and not in terms of other pre-existing qualifications or professional status.
The National Mediation Standard (NMS)	
In order to be Accredited according to the NMS, mediators must have successfully attended and displayed understanding and competence in an education and training course comprising theory, experiential involvement in mediation simulations, and consideration of ethical issues. The training will have the following features:	See Part IV Q 9, below.
1. It is conducted by a RMAB. 2 It is of a minimum of xxx hours in duration. 3. It covers the following areas of substantive knowledge: • The nature of conflict, including the dynamics of violence • The appropriateness or inappropriateness of mediation • Pre-mediation preparation, intake and screening • Communication patterns in conflict situations • Negotiation dynamics in mediation • Cultural issues in mediation and dispute resolution • The stages and functions of the mediation process • The roles and functions of mediators • Ethical issues for mediators, with particular reference to dealing with power imbalances, confidentiality, impartiality and avoiding conflicts of interest • Key issues in a specific Code of Conduct selected for the course • The basic law of mediation on confidentiality, enforceability of mediated agreements and liability of mediators. 4. There must be instruction and skills development in the following techniques: • Preparation for mediation • Intake and screening • Conduct and management of the mediation process • Appropriate communication skills • Negotiation techniques • Mediator interventions appropriate to probable difficulties in mediation • Potential responses to high emotion, power imbalances and violence • Use of separate meetings and shuttle mediation • Drafting of mediated agreements • Termination techniques • Responding to post-mediation difficulties	In Australian practice mediation training courses are between 24 and 60 hours in duration. Some European programs are considerably longer. See Part IV Q 6, below.

5. Each course participant shall be involved in at least six simulated mediation sessions, in at least two of which they perform the role of the mediator. Competence in the two mediator simulations will be assessed by two different members of the training team, and will be recorded in written form in an assessment instrument. 6. Each course participant will have to complete written debriefing evaluations of two simulated mediations, one in which they were a disputant and the other a mediator, in an evaluation form prescribed by the RMAB.	
7. There will be a written examination of between 45 and 90 minutes in duration in which participants will be asked to suggest appropriate or preferred ways of dealing with specific ethical dilemmas, tactical issues or difficult scenarios which can arise in mediation. 8. The overall assessment of participants for Accreditation will be based on competence displayed in mediation simulations, awareness displayed in the written debriefings, performance in the examination, and general course participation such as contributions to the discussions on ethical or critical issues. 9. RMABs will provide certification to the effect than an individual has satisfied the criteria for Accreditation according to the National Mediator Standard.	Written examinations on practical, legal and ethical issues are conducted in arbitration and other dispute resolution education and training.
Disclosure by RMABs RMABs are required to make information about their courses, instructors, programs, assessment schemes and fee structures available and accessible to the public. Any changes to these features must be notified to the Recognition and Supervision of Mediator Accreditation system on an annual basis.	
Fees and other charges RMABs will be able set their own fees and charges for education and training, assessment, and other services associated with Accreditation according to the National Mediator Standard.	
Membership of organisations The consultation process should determine whether Mediators Accredited according to the National Mediation Standard should be required to maintain ongoing membership of a 'mediator organisation', whether it be a commercial entity, such as IAMA or LEADR, or a not-for-profit organisation, such as ADRA or VADRA.	See Part V Q 7 , below.
Duration of Accreditation Accreditation will be for a period of xxx years, subject to compliance with continuing professional development requirements (see below) and the mediator not being de-accredited during this period. Upon expiry of the Accreditation period mediators will have to undergo re-accreditation according to the guidelines established by the Recognition and Supervision of Mediator Accreditation system and be re-certified by a RMAB as a Mediator Accredited according to the National Mediator Standard. Decisions about re-accreditation will be taken on relevant information and evidence required by RMABs, such as surveys of clients and advisors, co-mediator debriefings, supervisors' reports, references and other relevant material.	See Part V Q 10, below.
Ongoing practice and continuing professional development requirements In order to retain Accredited status, mediators are required to satisfy stipulated continuing professional development (CPD) requirements each year. Here CPD refers to any form of education or training relating to the delivery of mediation services. The CPD requirements will be:	Details of these requirements will be considered in the consultation phases. See Part V S 11, below.
• The conduct of xxx mediations a year, or every three-year cycle. • Attendance at xxx hours of continuing professional development courses,	For these purposes undertaking a mediation will ordinarily refer to acting as mediator in the

workshops, seminars or other activities in every xxx-year cycle, provided by an RMAB. • Appropriate supervision or auditing of clinical practice. The RMABs will be responsible for conducting CPD courses and programs on a fee-for-service basis. They will provide information on course attendance for purposes of updating the Register of Accredited Mediators.	mediation proper and not to only performing intake or preliminary work. Requirements could focus on 'qualitative' factors, involving specific mediator functions, rather than specifying the number of attendance hours
Relationship with Other Accreditation Systems The National Mediator Accreditation System will not supplant other existing, or future, mediator accreditation systems. Essentially it would overlap with such systems and neither override them nor be subordinate to them. Mediators could continue to be accredited by courts, tribunals, industry bodies, community organisations or member organisations.	Several law societies have regimes for practitioners to become 'specialists' in mediation practice. Bodies whose 'accreditation' systems are equal or superior to those contained in this proposal could apply to become RMABs.
Existing forms of accreditation have their own requirements in relation to qualifications, training, standards, supervision and accountability and these would be left intact. A mediator could be accredited according to the National Mediator Standard and also in relation to a private or government mediation service. However only those accredited in terms of the National Mediator Accreditation System will be able to hold themselves out in marketing, promotional and professional material as being accredited in terms of the National Mediation Standard.	Accreditation systems are run by private service-providing organisations, commercial enterprises, courts and government agencies. There is no automatic mutual recognition among the schemes although the private organisations have increased such recognition in recent years. Governments accredit mediators in terms of legislation for specific purposes relating to a legislative scheme or court program.[10]
Client feedback, complaints and discipline system Where an Accredited mediator is alleged to be in breach of an applicable mediator Code of Conduct, the criminal law or other relevant professional standard, a complainant would be expected to first seek redress from the mediator or service-providing institution, before registering a complaint with the Complaints and Discipline system. The Complaints and Discipline system will initially deal with the complaint in an informal and expeditious manner with the object of resolving the issues between the complainant and mediator or institution consensually in light of their mutual interests. Where the complaint process has not been completed satisfactorily through the informal manner, the complainant may refer it to a Mediator Disciplinary Board. The Mediator Disciplinary Board will be part of the Complaints and Discipline function and will be constituted in a manner agreed during the consultation process.	See Part III, below.
The Mediator Disciplinary Board must, with due regard to the rules of procedural fairness for all parties, make a determination on whether the Accredited mediator is in breach of an applicable Code of Conduct, law or other relevant standard. The determination must be made in light of the established facts of the situation and the provisions of the applicable Code of Conduct. Where the mediator is found to be in breach, the Disciplinary Board may temporarily suspend the mediator's Accreditation for a defined period or withdraw the Accreditation altogether. Where Accreditation is withdrawn the mediator will not be able to re-apply for Accreditation until the lapse of at least xxx years.	See Part V S 12.
The general procedures to be followed in the complaints process and the disciplinary determination shall be set out by the Complaints and Discipline system and shall be publicly available to mediators and mediation clients.	
Recognition of prior mediator training and experience The Accreditation system will indicate the extent to which prior training and experience of mediators is to be taken into account in assessing the credentials of mediators applying to be Accredited in terms of the new system.	See Part III, below.

Consequences of Accreditation	
Mediators who have satisfied the requirements of the National Mediator Accreditation System will be able to hold themselves out as being Accredited according to the National Mediation Standard in any marketing, promotional or professional materials.	Mediation providers may elect to make referrals only to NMS-Accredited mediators. Mediation bodies funded by government may be required to use only NMS-Accredited mediators.[12] 'Trust marking' might be used by commercial enterprises where their mediators are NMS-Accredited. Contractual dispute resolution clauses, industry codes and other instruments may require the provision of services by NMS-Accredited mediators.
There would be no sanctions within the system in relation to mediators who falsely held themselves out to be Accredited according to the National Mediation Standard, but they could still be subject to sanctions under statute or at common law.[11]	This follows from the lack of legislative backing for the system.
Register of Mediators Accredited according to the National Standard	
There will be a single national Register of Mediators Accredited in terms of the scheme. The Register will contain standardised information on listed mediators and will be updated on an annual basis in the light of new accreditations, accreditation renewals, lapsed accreditations and de-accreditations. Information on the Register would be accessible to the public.	See Part V S 6, below.
Review, evaluation and adaptation	
The Accreditation system will be independently evaluated and reviewed after xxx years of operation through the Evaluation and Review system. In the light of this evaluation, consideration will be given to adapting and modifying the system.	See Part V S 13, below. An appropriate format for this function will be considered during the consultation processes.
Part III Key issues for consideration	
Recognition of prior training and experience	
As the recognition of prior training and experience is likely to be a controversial feature of any mediator Accreditation system it is proposed that it be dealt with extensively in the public consultation process.	
As an initial Accreditation regime it is recommended that the emphasis in the National Mediator Accreditation system should remain on demonstrated skills, knowledge and understanding in relation to mediation, regardless of how these are achieved by mediators. It should not allow these factors to be undermined by recognising other prior training and experience too readily.	
From a practical point of view it would not be possible for all mediators to have to satisfy the requirements of the National Mediator Accreditation System immediately as there would be insufficient capacity for education, training and assessment in the short term. The system is also optional so that there would be no compulsion to qualify. There are two options for an interim period:	
• That mediators with prescribed training and experience would be able to hold themselves out as being Accredited according to the National Mediator Standard for a prescribed number of years (the grace period), after which they would have to submit themselves for formal Accreditation in terms of the system.	This is referred to as the 'grand-parenting' arrangement in terms of which all those with prescribed prior training and experience are automatically registered into the new system.
• That there would be no provision for interim Accreditation of experienced mediators, as the system is in any event optional, and only mediators who undertake assessment and Accreditation according to the requirements of the system will be able to claim Accreditation according to the National Mediation Standard.	
Functions within the system	
In its 2004 paper NADRAC invited comments on the formation, structure, membership, funding and name for a body that would oversee the development	

of accreditation standards.[13] This relates to the frequently-discussed question of a peak body or professional association for mediators in Australia.

Peak or industry bodies are associated with the collective interests of various occupations, industries and professions, in particular with external representation, advocacy, and lobbying to government, the private sector and the media. A professional association normally goes beyond advocacy and representation and is involved in the development of admission rules for the practice in question, setting codes of conduct and imposing disciplinary measures on members where appropriate, and in other matters of professional governance. In return for these self-regulatory functions professional associations customarily negotiate with the state to prevent non-members through legislation or regulation from pursuing the particular occupational practice.

The National Mediator Accreditation system is based on the object of avoiding elaborate infra-structural requirements and the organisational and financial burdens they impose. One of the advantages of a basic, devolved model is that is does not require a peak body, official association or other elaborate infra-structure. The 'framework' approach recommended by NADRAC entails individual organisations establishing their own standards systems; these organisations could be educational bodies, service providing institutions, government agencies, courts or tribunals. The current proposal builds on that approach, in particular in relation to the education, training and assessment requirements. However it is still necessary to designate which bodies would be able to Accredit individuals according to the National Mediation Standard and to perform the other supervisory roles required in the system.

The main function required by this model is that of designating the RMABs. This is referred to as the Recognition and Supervision of Mediator Accreditation function. This could be provided through a body established, permanently or from time to time, from nominees of various mediation organisations operating in a collaborative 'confederal' arrangement. Organisations would likely require a prior indication of this body's structures and procedures before committing to it. As with the other infrastructure, it also raises questions about funding and resources.

As regards the Complaints-Handling and Discipline function, the current model implies that some of this infra-structure can be provided by participating bodies, for example RMABs could be required to deal with complaints against mediators whom they have Accredited. It would be easier to require RMABs to exercise disciplinary jurisdiction in respect of mediators it had Accredited if the mediators were required to have continuing membership of that body, and less easy to do so if they were not. However it is likely that other structures and resources will still be required to address complaints in a facilitative way and to make determinations when this is not successful. This could be a relatively small body based more on expertise than representativeness, for example a body of experienced mediators who volunteer their services, an existing ombudsman-type body contracted for the purpose, or a retired judge or mediator appointed when there is a need.

As regards the functions related to the Register of Accredited Mediators are concerned, these are essentially of an administrative nature and could be conducted by a single institution on a contracted basis. As regards the Review, Evaluation and Adaptation function this could involve an ad hoc, single-issue body which will only operate once the time for review arises. It would require both legitimacy in the mediation community and expertise in relation to professional review and evaluation of systems and processes. It could be a group appointed by the National Mediation Conference Pty Ltd, a private organisation contracted for the purpose, or even a 'peak body' or professional association if such has been established in the interim period.

In due course a peak body or professional association, involving memberships, fees, legal organisation and administrative personnel, could be developed to perform all or some of the above functions. However the committee considered that at this stage of Accreditation such a body was not necessitated. The possible

The options below have been considered by NADRAC which has emphasised that options B and C would not fit within the role and status of that body. NADRAC has never been a peak body or professional association and is unlikely to have its Charter altered for this purpose. These options have been retained here for completeness' sake but it is clear that that they are unlikely to be practical possibilities under current arrangements.

options for dealing with the four functions are discussed in Table 1 below. Where the different functions are performed through different structures and processes, it could give rise to governance issues. Thus there may be gaps and deficiencies in the overall system, for example in making connections between education and training requirements, on one hand, and complaints, on the other. A more integrated system would allow for interaction and feedback between the two. These functions will be extensively canvassed in the consultation processes.	
Sector-based Accreditation NADRAC recommended that there should not be a single pathway for mediator accreditation, but that it should be determined on a sector by sector basis. This followed from the diversity principle which acknowledged the value of the many different contexts and styles of mediation practice.[15] This raises the question of whether the National Mediator Standard should be diversified to take account of different areas of mediation practice, such as family mediation, native title mediation or personal injuries mediation, or whether the specialised sector-based accreditation should be left up to relevant courts, industry bodies or existing professional associations.	See Part V S 8, below. See Part IV Q 1, below.
Levels of Accreditation The proposal refers to only one level of Accreditation. Some existing accreditation systems provide for basic accreditation and post-basic accreditation, in the form of accreditation as an intermediate or advanced practitioner. This subject will be canvassed during the consultation processes.	
Common Code of Mediator Conduct The current proposal allows RMABs to select a Code of Mediator Conduct for purposes of education, training and assessment. This could lead to different standards being imposed in complaints and disciplinary procedures. During the consultation process it may be regarded as appropriate to develop a common Code of Mediator Conduct which is used by all RMABs and in all complaints and disciplinary processes conducted in terms of the system.	See Part IV Q 10.
Costs implications Any system of Accreditation involves financial and other resource costs, for example in relation to the running of the Complaints and Discipline function or maintaining the Register of Accredited Mediators. The devolved system involves some rationalisation of resources through the use of existing infra-structure of various organisations. The additional costs for these bodies will be recouped through the training and assessment process and could ultimately involve higher costs for mediation consumers. Resource issues require attention during the consultation process.	As part of this system the TAFE sector has established training courses for accreditation of different vocational groups including mediators.
Correlation with other systems There needs to be clarity on how the National Mediator Accreditation System correalates with systems such as the Australian National Training Authority's competency standards for mediation which provide benchmarks for training programs. The standards provide a basis for the Certificate IV course in Community Mediation, CHC Med 404A.[16]	

Table 1. Possible options for dealing with the four functions

Model	Advantages	Disadvantages	Issues arising
A. Committee established by a Commonwealth Government department	Funding borne by government. Shows government commitment to mediation. May encourage various governments to use accredited mediators.	Problems over jurisdiction. Could be seen as a form of state regulation. Susceptible to changing government policy	Might this model encourage more mediators into the voluntary system?
B. NADRAC and its secretariat	High status and legitimacy. Existing secretariat in place.	Not within charter of NADRAC. Changes NADRAC independence and advisory nature. Would require additional resources.	Could NADRAC undertake some activities on an interim only basis?
C. Expanded NADRAC, or body appointed by NADRAC, with permanent representation of different sectors	High status through association with NADRAC. Body could be representative of different mediation interest groups.	Would require additional resources from government. Could be seen as too close to government.	As above.
D. National Mediation Conference Pty Ltd	Existing institution with legal persona. Legitimacy in mediation sector. Has the running of the current initiative.	Not a representative body. Lack of permanent infrastructure.	Would accredited mediators be prepared to pay $ xx a year to fund this body?
E. New Not for Profit Organisation (National Mediator Standards Pty Ltd)	Dedicated body with specific focus on standards. Permanent positions for different interest groups. Could report to AG's department or NADRAC.	Requires incorporation and accompanying expenses. Becomes in effect a peak body.	How would the Directors and Members be appointed? Would accredited mediators be prepared to pay $ xx a year to fund the body?
F. Federal or confederal body with nominees of participating institutions	No government funding entailed. Representative in design and nature. Would require collaborative efforts across movement.	Costs borne by participating bodies and ultimately consumers. Security for all participating bodies. The problem of 'volunteerism'.	Would the ad hoc nature of such a body lead to important issues being over-looked? Some interested bodies might not have resources or personnel to participate.
G. State- and territory-based infrastructure	Acknowledges state-based nature of much mediation regulation, funding and practice.	Less consistency than with national model. Creates eight devolved problems instead of a single national one.	Some States and territories might not move ahead at all on mediator accreditation.
H. National peak body	Can undertake wide-ranging functions. Give effect to self-regulation philosophy. Funded by institutional or individual membership fees and not government.	Would involve extensive community consultations and legal outlays. Would be a 'political body'. Might not accommodate diversity in mediation field.	Could this lead to licensing and a closed shop for mediators? Would mediators be prepared to fund it?

Part IV

General Consultation Questions

Q 1 To what extent would it be advisable in the initial stages of the Accreditation system to have more than one level of Accreditation, for example Basic, Intermediate and Advanced?

Q 2 If there is a national Register of Accredited Mediators, what information should be kept on the Register, apart from the fact of Accreditation, and to what extent should information be accessible to the public?

Q 3 To what extent should the RMABs be responsible for keeping records of Accredited mediators and what information should they, or should they not, make available to bodies dealing with complaints and discipline?

Q 4 Should there be restrictions on course instructors also acting as assessors of mediator competence, or on a person who has coached a participant in a practice session subsequently acting as an assessor?

Q 5 Where use is made of staff other than instructors to assess the competence of participants in mediation simulations, should there be requirements in relation to the assessors' own qualifications and experience?

Q 6 What is a desirable instruction period, in hours, for the conduct of education, training and assessment to qualify for Accreditation according to the National Mediator Standard?

Q 7 What further specificity is required about the qualifications and experience of members of the RMABs, for example as teachers or practitioners?

Q 8 To what extent should the proposal allow for bodies to become RMABs even though they have not traditionally provided training and educational services?

Q 9 What improvements could be made to the proposed National Mediation Standard for it to suit the purposes of the system?

Q 10 Would complaints and discipline procedures be based on the varying Codes of Conduct used by different training and education bodies and what might the implications of this arrangement be for the goal of consistency?

Q 11 To what extent should the 're-accreditation' system be defined, and how different should the requirements be to those for original Accreditation?

Q 12 To what extent do you support the proposed system's reliance on the extensive education and training facilities currently available throughout Australia and the decision not to propose in this stage of Accreditation a new national training and accreditation authority?

Q 13 To what extent could one of the unintended consequences of a voluntary system be that the provision of mediation is made more expensive for organisations with existing high standards while it is ignored entirely by sole practitioners, and how might this problem be addressed?

Please add any comments on the proposal which do not fall under the above headings.

Part V

Survey Questions

		Yes	No
S 1	If there is a uniform system of National Mediator Accreditation are you in favour of it being optional for mediators?		
S 2	Are you in favour of the National Mediator Accreditation system providing for the Accreditation of mediators to be undertaken on a devolved basis by a plurality of Recognised Mediator Accreditation Bodies?		
S 3	If there is a National Mediator Accreditation system for mediators are you in favour of it being operated without state regulation?		
S 4	If there is a system of National Mediator Accreditation are you in favour of it being a 'basic' system in the sense that qualifications, training, competencies and other elements are at the relatively low end of the scale of such requirements?		
S 5	Are you in favour of a 'professional association' or 'peak body', representative of the mediation community, to organise and maintain a system of uniform national mediator accreditation?		
S 6	If there is a system of National Mediator Accreditation are you in favour of there being a national Register of Accredited Mediators?		
S 7	Should continuing Accreditation require membership of an organisation or body such as IAMA, LEADR, VADRA, ADRA or other equivalent bodies?		
S 8	Should there be separate Accreditation systems for discrete areas of practice, such as family mediation?		

			Mark an X where applicable
S 9	RMABs should be approved for the purposes of Accrediting mediators for an initial period of:	1 year	
		2 years	
		3 years	
		4 years	
S 10	The period for which mediators should be Accredited in terms of the National Mediator Accreditation system should be:	1 year	
		2 years	
		3 years	
		4 years	
S 11	Accredited Mediators should be required to attend approved continuing Professional Development Courses each year for a period of:	3 hours	
		6 hours	
		10 hours	
S 12	Where an Accredited mediator has their Accreditation withdrawn they should be able to apply for re-accreditation after:	1 year	
		2 years	
		3 years	
		4 years	
S 13	The National Mediation Accreditation System should be subjected to review and evaluation after:	3 years of operation	
		4 years of operation	
		6 years of operation	

Please refer to the infra-structural models discussed in Part III, and attaching rankings from 1 to 8 to the various models, 8 indicating your greatest support and 1 indicating your least support:

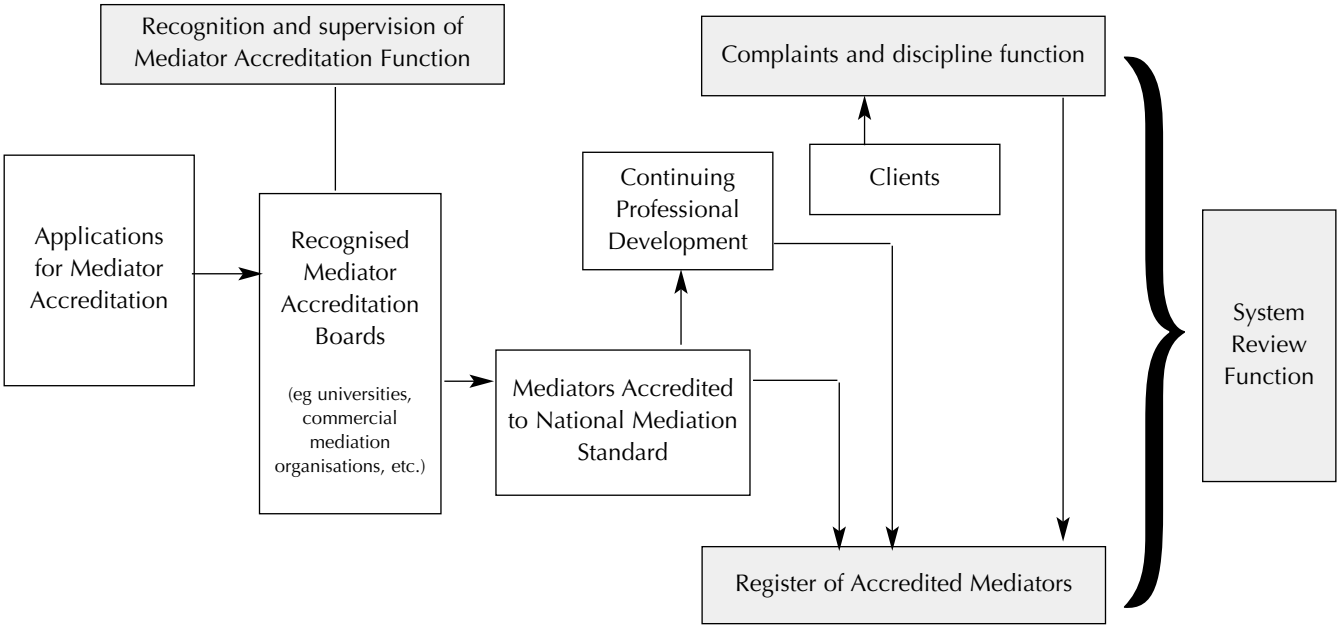
Model	Rank
Model A	
Model B	
Model C	
Model D	
Model E	
Model F	
Model G	
Model H	

National Mediator Accreditation System

DRAFT PROPOSAL FOR PUBLIC CONSULTATION

Part VI

Flow chart of proposed National Mediator Accreditation System



Endnotes

1. There is an extensive literature from many different countries on all aspects dealt with in this proposal. Some of the local sources are Astor H and Chinkin C *Dispute Resolution in Australia* (2ed 2002, Lexis Nexis Butterworths) pp 203-234; Spencer D and Altobelli T *Dispute Resolution in Australia – Cases and Materials* (LawBook Co, 2005), pp 455-494, Sourdin T *Alternative Dispute Resolution* (2ed 2005, LawBook Co) 215-230; Boulle L *Mediation – Principles Process Practice* (2nd ed 2005, Lexis Nexis Butterworths) 460-504.

2. On the differences between accreditation and assessment see NADRAC, *Who says you're a mediator? Towards a National System for Accrediting Mediators* (2004) 3.

3. NADRAC has emphasised the importance of existing accreditation organisations supporting the new national Accreditation system. *Who says you're a mediator? Towards a National System for Accrediting Mediators* (2004) 9.

4. This approach also follows the NADRAC recommendation [*Who says you're a mediator? Towards a National System for Accrediting Mediators* (2004) 9] that it is not feasible at this stage to establish a single body to accredit each mediator on an individual basis.

5. NADRAC *A Framework for ADR Standards* (2001): www.nadrac.gov.au/www/disputeresolutionHome.nsf/Web+Pages/6F10B734577A902DCA256B4C00030DIE?OpenDocument

6. For example the ACT Attorney-General in terms of the *Mediation Act 1997* (ACT) and the Commonwealth Attorney-General under the *Family Law Act 1975* (Cth).

7. See NADRAC *ADR Terminology: A Discussion Paper* (2002).

8. The peak body question was canvassed in the NADRAC Standards paper – *A Framework for ADR Standards* (2001) 87.

9. NADRAC did not support a minimum level of tertiary qualification for all mediators in *A Framework for ADR Standards* (2001), Recommendation 16 at 84, whereas in some European countries university qualifications are required.

10. For example, by the NSW Attorney-General under the *Community Justice Centres Act 1983* (NSW) and by the Chief Justice of the Family Court *under the Family Law Act 1975* (Cth).

11. As regards limitation of mediator liability, where this is not afforded by statute, an occupational association may apply to the Professional Standards Council for approval of a scheme to limit the common law liability of the association's members. In the case of mediators this would be facilitated by the existence of a National Mediator Accreditation scheme. In order for a scheme to be approved by the Council the association must ensure that members have insurance to cover the relevant level of liability, have a complaints-handling and disciplinary procedure and have a risk management strategy to be implemented by members.

12. This is already the case with family mediators subject to the FAMQIS quality accreditation system. The principle also applies to mediation organisations to whom assistance can be granted by the minister for provision of family mediation services – *Family Law Reform Act 1995* (Cth), Div 3 of Part II.

13. See NADRAC, *Who says you're a mediator? Towards a National System for Accrediting Mediators* (2004) iv.

14. NADRAC, *A Framework for ADR Standards* (2001).

15. NADRAC *A Framework for ADR Standards* (2001) 62.

16. www.ntis.gov.au/cgi-bin/washtml/~ntis/about.wxh?page=#arecframe. The Community Services and Health Industry Skills Council will be proposing competencies and qualifications for family mediators under the new Family Law Act provisions and the final Accreditation proposal will have to be cognisant of these.