Mediator Standards Board

**Submissions in Response to the Family Law Review Issues Paper**

# The Mediator Standards Board

The Mediator Standards Board (MSB) was established through a grant by the Federal Attorney General’s Department and its National Alternative Dispute Resolution Advisory Council (NADRAC) in consultation with the bi-annual National Mediation Conference. The MSB was tasked to develop, support, and promote standards of competency and knowledge for mediators in Australia.

The MSB is responsible for the ongoing development and maintenance of the [National Mediator Accreditation System (NMAS)](https://msb.org.au/themes/msb/assets/documents/national-mediator-accreditation-system.pdf) introduced in 2008. See: <https://msb.org.au/>

The MSB’s is funded by its members and the modest annual fee paid by mediators seeking accreditation.

The MSB’s Objectives are to:

1. Develop, maintain and amend the NMAS, which includes the [Approval Standards](https://msb.org.au/themes/msb/assets/documents/national-mediator-accreditation-system-2015.pdf#page=3) and the [Practice Standards](https://msb.org.au/themes/msb/assets/documents/national-mediator-accreditation-system-2015.pdf#page=9) (the Standards).
2. Oversee the application of the Standards with a view to achieving consistency, quality and public protection regarding mediation services and mediation training.
3. Support, complement and encourage members in their quest to meet their objectives in relation to the Standards.
4. Ensure that training and accreditation of mediators continues to develop.
5. Require records to be maintained of mediators who are accredited under the Standards and facilitate access to mediators who have national accreditation.

**The** [**National Mediation Accreditation (NMAS)**](https://msb.org.au/themes/msb/assets/documents/national-mediator-accreditation-system-2015.pdf) **provides the threshold standard required of Mediators practising in the family law jurisdiction.**

The MSB makes the following submissions to Questions 20, 21, 22, 26, 41 and 42 of the Review.

***Question 20*** *What changes to court processes could be made to facilitate the*

*timely and cost-effective resolution of family law disputes?*

The Mediator Standards Board (MSB) would recommend that any changes to court processes include utilisation of mediation by mediators accredited under the National Mediator Accreditation System (NMAS).

The MSB would encourage the use of mediation at the earliest possible stage in the dispute. Further, the MSB submits that stakeholders should view mediation not only as a preliminary step in resolving family law disputes but as an ongoing option.

**Question 21** *Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?*

The Mediator Standards Board (MSB) would strongly support the courts creating greater opportunity for parties to use mediation/FDR in both parenting and property matters to facilitate the early resolution of disputes.

The MSB also recommends that anybody working in the FDR and mediation context be accredited under the National Mediation Accreditation System (NMAS).

It is the MSB’s view that if the courts diverted those disputes that were likely to benefit from ADR services to mediation before the conflict becomes entrenched, this could alleviate the well published delays in the courts. However, it may not be of sufficient incentive to simply offer “opportunities” for mediation as many parties can become so embroiled in the adversarial system that they become unwilling to attempt mediation, even when it might be in their best interests to do so. The MSB submits that the courts will need to find a mechanism to divert suitable cases to mediation.

In 2015, the Australian Institute of Family Studies (AIFS) reported that since the 2006 family law reforms, Court filings in children's matters decreased by 25% indicating a greater use of mediation. However, the report also showed that the sharp decreases shown in the years just after the 2006 reforms stabilised at this level in the following years.[[1]](#footnote-1) It appears that many cases suitable for mediation are still appearing before the court, suggesting that the courts could strengthen their diversionary system.

It is the MSB’s view that one way that this could be achieved is by extending the requirement to attempt mediation / FDR to property matters and providing greater clarity around the principles of good faith bargaining. This would need to be done in a manner that still protected those affected by family violence.

**Question 22** *How can current dispute resolution processes be modified to provide effective low-cost options for resolving small property matters?*

The Mediator Standards Board (MSB) would recommend the increased use of mediation by mediators accredited under the National Mediation Accreditation System (NMAS) for resolving small property matters.

The MSB would be happy to engage in discussion about what additional and specialist training mediators might require in resolving family property matters.

**Question 26** *In what ways could non-adjudicative dispute resolution processes, such as family dispute resolution and conciliation, be developed or expanded to better support families to resolve disputes in a timely and cost-effective way?*

The Mediator Standards Board (MSB) would support the increased use of family dispute resolution and conciliation services but would be concerned that ADR services are properly governed.

The National Mediation Accreditation Standards (NMAS) spells out in detail the required standards under which accredited mediators must practice. While the NMAS is not silent on conciliation and other hybrid processes, there is more work required to articulate the standards (skills, ethics, training, supervision) of these other forms of ADR.

The MSB would be willing to assist to develop and implement suitable standards across a wide range of ADR practices that could be more broadly deployed in the family law system.

Although strongly supporting the increased use of ADR in family law matters, the MSB recommends:

1. caution against any relaxation of the qualifications and standards required to practice ADR.
2. that anybody working in the FDR and mediation context be accredited under the National Mediation Accreditation System (NMAS). Other than wasting the time of parties, an unskilled practitioner can do great harm to a separating family if the practitioner does not manage the process in a competent manner.

***Question 41*** *What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?*

***PART A***The Mediator Standards Board (MSB) submits that mandatory National Mediation Accreditation System (NMAS) accreditation will ensure that those conducting mediation in the family law system (which could include mediators, conciliators, arbitrators and facilitators) possess and practise the core competencies required.

The NMAS already sets out the measures needed to ensure that the professionals have and maintain the core competencies required of professionals who work in family law mediation/FDR and other ADR processes.

***PART B***

There are at present three levels of qualification for practitioners mediating within the family law system:

1. The first is the no qualification level where the practitioners have no mediation training or experience (where they potentially rely solely on their belief in their natural negotiating skills).
2. The second is obtaining accreditation under NMAS. This involves training in the broad practice of mediation and its theory as well as an assessment by experienced mediators of the candidates’ performance in a simulation. It also includes ongoing continuing professional development (CPD) and a minimum number of practising hours to maintain accreditation. NMAS accredited mediators are also subject to a suitable disciplinary regime.
3. The third is accreditation under the Family Law (Family Dispute Resolution Practitioners) Regulations 2008.

The MSB submits that there should be one consistent entry point into mediating or facilitating in the family law system.

The MSB has developed and continues to develop a set of standards for mediators and facilitators, exercises a role in over viewing the various training organisations and has an audit process to maintain those standards.

The MSB would have the capacity to incorporate the two accreditation systems into one and to manage the combined system. Accordingly, the MSB recommends that:

1. there be a central coordinating body to manage the interface between the FDRP and NMAS
2. the MSB has a role in assist with the implementation of such a body should the recommendation be accepted.

***Question 42*** *What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers have and maintain these competencies?*

While the Mediator Standards Board (MSB) encourages judicial officers to obtain an understanding of the mediator role and mediation processes, it would caution against an approach which encouraged parties to wait until they are in the court process before attempting mediation. In the family law context, where emotions run high, conflict is easily escalated, and delayed resolution can harm children, the MSB submits that it is crucial that mediation occurs as early in the dispute as possible.

The MSB promotes and encourages the development of a vibrant skilled mediation community to provide services to people within family law disputes. Accordingly, the MSB recommends that judicial officers have an understand of the role of the mediator in non-adversarial mediation processes and an understanding of a broad range of mediation and other ADR processes.

1. Kaspiew, R., Moloney, L., Dunstan, J., & De Maio, J. (2015). Family law court filings 2004–05 to 2012–13 (Research Report No. 30). Melbourne: Australian Institute of Family Studies. [↑](#footnote-ref-1)