



NMAS REVIEW

2020-2022

Findings and Recommendations

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*We acknowledge the Wurundjeri People
of the Kulin Nations as the traditional
custodians of the land upon which we
live and work*

Resolution Resources PTY LTD

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INTRODUCTION

Resolution Resources was engaged to conduct the review of the National Mediator Accreditation System (NMAS Review).

They were asked to:

- Evaluate the effectiveness of the National NMAS;
- Consider what changes and additions need to be made to it. For example, changes and additions may include (subject to the feedback received):
 - Consideration of the inclusion of conciliation or other DR processes into the NMAS; and
 - Provisions that take account of Aboriginal and Torres Strait Islander mediator needs and requirements.
- Situate the NMAS in a domestic and international context
 - Including reviewing comparative international regulatory dispute systems

AN HONEST, ETHICAL AND CONSCIENTIOUS REVIEW

The NMAS Review team at [Resolution Resources](#) was committed to ensuring the review of the National Mediator Accreditation System (NMAS Review) was conducted responsibly, ethically and with integrity. While the NMAS Review was not conducted under the auspices of a traditional research institution, we recognised its potential to make an important contribution to the industry-based research into dispute resolution (DR). Within this context, the NMAS Review 2020-22 adopted the [Australian Code for the Responsible Conduct of Research](#), which articulates the broad principles that characterise an honest, ethical and conscientious research culture. It establishes a framework for responsible research conduct that provides a foundation for high-quality research, credibility and community trust in the research endeavour. It was also important to ensure that the data collected could be used for future academic research.

PURPOSE OF THIS DOCUMENT

The [Mediator Standards Board](#) (MSB), with the assistance of an external facilitator, will consider the recommendations from the NMAS Review and finalise the draft of the NMAS to be adopted.

This document has been presented in a way to assist further consultation and for an audience broader than the MSB.

Resolution Resources will publish in the future to report on the methodology and technical aspects of the NMAS Review.

SOURCES



EXISTING NMAS

PROCESS AND ACTIVITIES

‘The purpose of the NMAS is to promote quality, consistency and accountability of NMAS accredited mediators within the diversity of mediation practice in Australia. It informs participants in mediation (participants) about what they can expect of a NMAS accredited mediator’.¹

It is the foundation of the NMAS Review and recommendations made to the MSB.

Methodology and Analysis

- Stakeholder review
- Comparative analysis



EXTERNAL BENCHMARKS

(INCLUDING EXISTING
FRAMEWORKS AND RESEARCH)

This included (but was not limited to):

- Current research and reports connected to the NMAS and the broader DR context. E.g [ADRAC’s Conciliation Report](#) – published during the NMAS Review
- Frameworks such as the [Australian Qualifications Framework](#) (AQF), [ACCC’s Guidelines for developing effective voluntary industry codes of conduct](#)
- Legislation and Conventions. E.g the [Singapore Convention](#), [Family Law \(Family Dispute Resolution Practitioners\) Regulations 2008 \(Cth\)](#)

Methodology and Analysis

- Desktop review
- Comparative analysis



REFERENCE GROUPS & COMMUNITY CONSULTATION

This was the first stage of the NMAS Review consultation process. The purpose of the reference groups was to gather a small group of representatives from identified stakeholder groups to provide targeted expert insight into potential areas for change or modification of the NMAS. Participation was by invitation and the 29 representatives were selected in collaboration with stakeholders.

Reference Groups:

1. Aboriginal and Torres Strait Islander*
2. Diversity and inclusion
3. Current MSB member organisations (Member Orgs)

4. Non-NMAS ADR processes
5. Institutions with an interest in mediator practice

Members of Reference Groups were also a touchpoint throughout the life of the review.

First Nations Consultation

As part of the review, Resolution Resources was asked to consider the inclusion of provisions that take account of Aboriginal and Torres Strait Islander mediator needs and requirements. A First Nations Stakeholder Engagement Manager* was employed to undertake First Nations consultation to ensure that consultation was culturally appropriate. The First Nations Stakeholder Engagement Manager also provided advice and guidance about barriers to engagement, including strategies to address these.

*Notes:

- There was a specific reference group for the purpose of considering the inclusion of First Nations Mediator needs under the NMAS. First Nations representatives were also invited to contribute across all of the reference groups.
- Identified position

Methodology and Analysis

- Focus Groups
- Thematic analysis
- Comparative analysis



WORKSHOPS

The purpose of the workshops was to gather expert practitioners and interested parties to collectively review selected sections of the NMAS as informed by recommendations from the Reference Groups. The information generated from these workshops formed the basis of the NMAS Review Survey: Part 1.

Participation was by invitation, through the expression of interest (EOI) and representatives were also selected in collaboration with stakeholders. All current MSB Member Orgs were invited to nominate two representatives to attend a workshop. There were 50 participants over the four workshops.

Videos and reading materials created for the participants to help them prepare for the workshops are available on the [NMAS Review Hub](#).

Methodology and Analysis

- Item development workshops
- Thematic analysis
- Comparative analysis



NMAS EFFECTIVENESS SURVEY

As part of the review, Resolution Resources was asked to evaluate the effectiveness of the NMAS. As such, we developed the NMAS Review Effectiveness Survey. The survey's main purpose was to ascertain the extent to which MSB Member Orgs and mediators perceive the NMAS to be effective. For the survey, 'effectiveness' was defined as helpful in relation to (6) six areasⁱⁱ.

The second purpose was to learn more about the DR community, and in doing so, find out any areas that required further investigation via the NMAS Survey.

Over 600 people participated in the survey. Once the data was cleaned (tidied up to remove duplicates, incomplete submission, etc.), there were 512 survey responses (481 mediators, 31 MSB Member Orgs) suitable for analysis.

We collected data about:

- Perceived helpfulness of the NMAS
- Mediator demographics/characteristics including:
 - Type
 - Years of experience
 - Age
 - Gender
 - Approach to practice etc
- Member Org characteristics
 - Size
 - Membership etc

Parts 1-4 of the NMAS Effective Survey Report can be found on the [NMAS Review Hub](#) and the [MSB website](#)

Methodology and Analysis

- Multiple choice questions survey
- Descriptive analysis, including cross-tabulation
- Analysis of variance (ANOVA)
- Tests for statistically significant differences (T-Test)



NMAS REVIEW SURVEY: PART 1 PILOT

The purpose of running a pilot was to invite representative stakeholders to review and complete draft surveys. Typically, they were designed to gather commentary on ease of use, structure, language, and areas identified for change or modification.

Participation in the NMAS Review Survey pilot was by invitation and EOI. There were 41 participants.

Methodology and Analysis

- Stakeholder review
- Thematic analysis
- Comparative analysis



NMAS REVIEW SURVEY: PART 1

The NMAS Review Survey was the final stage of consultation for the NMAS Review. It was the primary instrument of the review and, as such, was the review proper. Unlike many traditional review processes, the survey was developed in consultation with the DR community through the different stages of consultation.

Part 1: The NMAS Practice Standards and Approval Standards

398 respondents: 363 practitioners (359 of which were NMAS trained or accredited), 19 providers of NMAS training or accreditation, 12 dispute resolution service providers, three (3) other stakeholders, one (1) MSB

Methodology and Analysis

- Multiple choice questions and open text survey
- Descriptive analysis, including cross-tabulation
- Tests for statistically significant differences (T-Test)
- Analysis of variance (ANOVA)
- IRT Scale Construction for each of the four (4) professional domains (IRT), including correlation within and between scales
- Differential item functioning (Dif) comparing
 - Practitioners and Member Orgs
 - Practitioner types
 - Practitioner approaches
- Comparative analysis of above with MSB data



NMAS REVIEW SURVEY: PART 2

Part 2: The NMAS Approval Standards and the System

246 respondents: 221 practitioners (119 NMAS trained or accredited), 19 providers of training or accreditation, three (3) Dispute Resolution Service Providers, two (2) other stakeholders, 1 MSB

Methodology and Analysis

- Multiple choice questions and open text survey
- Thematics analysis
- Descriptive analysis, including cross-tabulation
- Wilcoxon signed-rank test to identify direction and scope of desired change, including
 - All responses
 - Practitioners
 - Member Orgs and Service Providers
- Tests for statistically significant differences (T-Test)
- Comparative analysis of above with MSB data

The background of the entire page is a dark blue field filled with a complex network of thin, light blue lines. These lines connect various nodes, which are represented by small, semi-transparent circles in colors like yellow, orange, red, and light blue. The network is dense and interconnected, with some nodes having multiple connections, creating a sense of a global or digital web.

EXECUTIVE SUMMARY

Following consultation, research and analysis, the NMAS Review team has made three (3) overarching recommendations.

OVERARCHING RECOMMENDATIONS

‘We trust that the community will see themselves in these recommendations.’

NMAS Review Team

OVERARCHING RECOMMENDATION 1



1. Determine viability, including ethical implications, of progressing the status of mediation from emerging profession to new profession.

RATIONALE

The outcome of **Recommendation 1** will establish the parameters and requirements for implementing **Recommendations 2** and **3**.

The following provides a summary of the findings prompting this recommendation

Mediation as a profession

- Despite community sentiment and the language often used, mediation does not currently possess all that is required to legitimately call itself a professionⁱⁱⁱ. E.g., it must have proven its ‘self-regulatory capacity – and been recognised by the combined Australian governments’^{iv}
- Consultation revealed that for a large proportion of mediators, it is a low-paid, insecure and low-demand industry that is difficult to enter.^v Complicating matters further, there do not appear to be professional bodies or associations that represent or advocate on their behalf.

(For further details, see Targeted recommendation A: Determine viability, including ethical implications, of progressing status from emerging profession to new profession^{vi})

OVERARCHING RECOMMENDATION 2



2. Adopt the **Draft Code** that is modelled on the ACCC voluntary industry code framework

RATIONALE

The original intention of the NMAS was as ‘a voluntary industry and self-regulated accreditation scheme’^{vii}. In keeping with this, the reviewers have drafted a voluntary industry code (**The Draft Code**) modelled on the ACCC guidelines for developing an industry code^{viii}. It restructures the existing NMAS to provide a coherent framework that articulates the modifications and changes arising from the consultation.

The Draft Code is designed to meet each element of the review’s brief and includes commentary throughout the document. It also provides options for an expanded application to accommodate a variety of non-determinative dispute resolution (NDR) practitioners, specifically family dispute resolution practitioners (FDRPs), conciliators and the potential for First Nations mediators.

The following provides a summary of the findings prompting this recommendation.

Mediation as a profession

- See Recommendation 1 above

(For further details, see Targeted Recommendation B: Adopt the ACCC voluntary industry code framework in preference to any other industry codes)

Shared understanding of the NMAS

Although the NMAS is a respected brand^{ix}, there is a lack of clarity and understanding in relation to the:

- NMAS structure, nomenclature and terminology
- MSB’s role, particularly oversight and support
- Expectations for training, accreditation and development of practice

This carries significant risks for the NMAS, including:

- Undermining its purpose in relation to promoting ‘quality, consistency and accountability of NMAS accredited mediators within the diversity of mediation practice in Australia’^x
- Falling short in its attempt to serve as a document that ‘informs participants in mediation (participants) about what they can expect of an NMAS accredited mediator.’^{xi}

(For further details see Targeted Recommendation C: Adopt the draft Code modelled on the ACCC’s voluntary industry code framework, including requirements for administering compliance and the training and accreditation framework (TAF))

Complaints handling

The complaints system does not meet the expectations of the community, as is not integrated, does not account for the entire system and does not provide an avenue for independent review.

(For further details see Targeted Recommendation D: Adopt the draft Code modelled on the ACCC voluntary industry code framework and its associated three-tier complaints scheme)

Diversity and Inclusion

There is an increasing awareness of the importance of diversity and inclusion (D&I) across all industries. Despite best intentions, some attempts to account for D&I are ill-conceived or inappropriate.

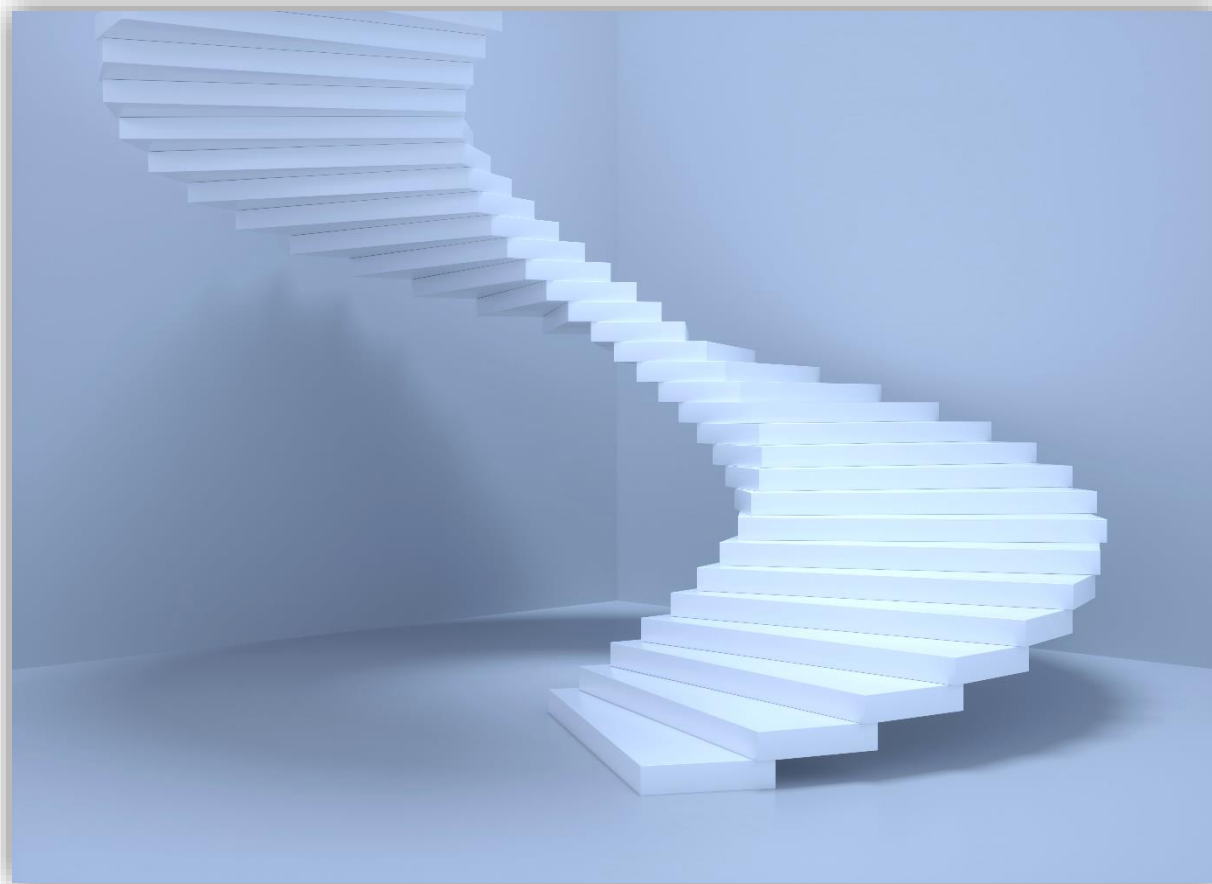
Mediation is no different, and consultation revealed a wide range of concerns related to D&I, including:

- Diversity on the MSB
- D&I considerations in the NMAS are narrow
- Accessibility in relation to training and the provision of services

(For further details see Targeted Recommendation I: Adopt the evidence-based D&I strategies as set out in the Draft Code, including strategies recommended within the ACCC [voluntary industry code framework](#)).

Situating the Standards

- The DR community exists beyond Australia and some considerations are worthwhile exploring to ensure the NMAS has global currency. For example:
 - Australia is a signatory of the Singapore Convention.
 - There is international appetite to professionalise the mediation industry.^{xii}
 - Australia makes a distinction between mediation and conciliation processes. Internationally, this difference is not as distinct and the terms are ‘interchangeable’ in some contexts.^{xiii}



OVERARCHING RECOMMENDATION 3



3. Adopt the Draft Code's training and accreditation framework (TAF)

RATIONALE

The existing NMAS Practice and Approval Standards have been assimilated into the Draft Code's training and accreditation framework (TAF). It also incorporates modifications and changes arising out of the NMAS Review.

The TAF provides a framework that provides a pathway from graduate to advanced practitioner status. It also provides scope for an expanded application to accommodate a variety of non-determinative dispute resolution (NDR) practitioners, specifically family dispute resolution practitioners (FDRPs), conciliators and the potential for First Nations mediators.

The following provides a summary of the findings prompting this recommendation.

Limitations of the NMAS

The NMAS was pioneering and is held in high regard for its vital role in the development of mediation in Australia. The current review draws heavily on its strong foundation, yet consultation has revealed that, over time, limitations have emerged. For example:

- Consultation revealed that while facilitative mediation remains a critical touchstone, it does not capture all that is happening in the field, such as variation of practice in response to context and the evolution of practice over time.
- Mediator practice is not homogenous and appears to become more heterogeneous over time. Further, a mediator's approach is not always determined by the type of mediator they identify as.
- Even though there are patterns across practitioner types, the approach to practice is varied. However, irrespective of approach, the label of practitioner, etc., there are more similarities across the field of NDR than differences. One of these similarities was that all types of practitioners – (including facilitative mediators) offer a range of information and guidance to some degree^{xiv}.
- There has been a call for an expanded purpose of the NMAS, including:
 - The desire for specialisation to be recognised.
 - Appetite from institutions and services beyond mediation to align themselves with the NMAS.
 - Training and accreditation that:
 - Extends course length and scope
 - Accounts for the diversity of practice
 - Provides scope to move beyond the minimum requirement for initial accreditation as practitioners advance in skills and experience
 - Provides a pathway to advanced practitioner status
 - Provides support for new practitioners
- Consultation has revealed that there was a mismatch between what can be achieved by people who had participated in a short course of training and what was expected of practising mediators.

(For further details see Targeted Recommendation E: Adopt the Draft Code's training and accreditation framework (TAF) to account for the evolution of practice)

Potential inclusion of conciliation and FDR

- If conciliation and other DR processes are to be included in the NMAS, it must:
 - Account for practitioners under co-existing schemes. E.g FDRPs
 - Acknowledge conciliation community interest in a conciliator accreditation system^{xv}

- Recognise variety of practice and specialisation
- Consultation revealed significantly more similarities than differences across NDR practice.

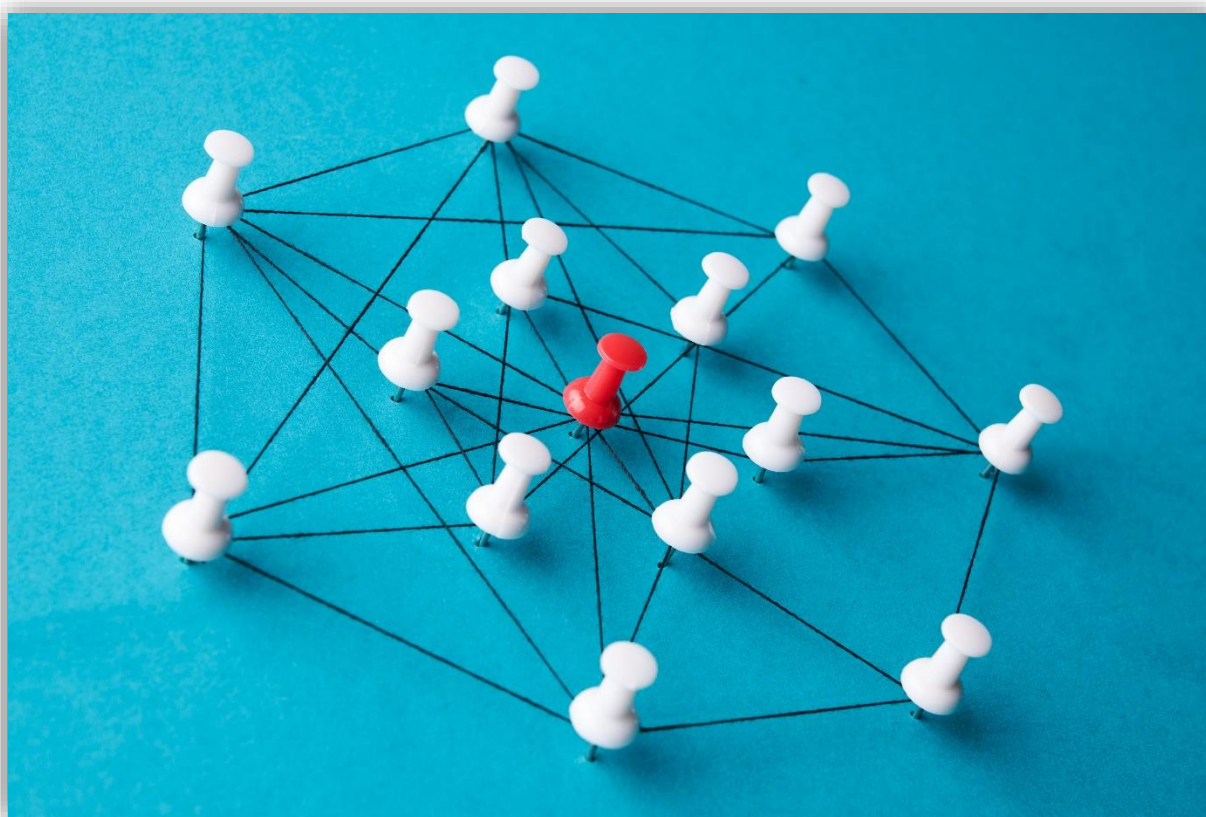
(For further details see Targeted Recommendation F: Adopt the draft Code, in particular, the training and accreditation framework (TAF))

Provisions that take account of Aboriginal and Torres Strait Islander mediator needs and requirements

- To achieve meaningful representation, it is necessary to develop or work with frameworks specifically designed to facilitate culturally appropriate consultation with First Nations individuals, organisations and communities. In addition, the consultations must be flexible in relation to timing and methodology and First Nations individuals taking part, must be paid for their expertise. Most importantly, all of this must be led by a First Nations individual familiar with the intricacies of coordinating First Nations stakeholders nationwide.

(For further details see Targeted Recommendation G: The MSB must work directly with First Nations mediators, taking into account issues raised in the First Nations Consultation Memo and

Targeted Recommendation H: Adopt the Draft Code's training and accreditation framework (TAF). This will ensure there is a training and accreditation framework in place that recognises the value of cultural expertise.)





FINDINGS AND RECOMMENDATIONS

The following sections outline:

- the scope of the consultation process undertaken for the NMAS Review
- Findings and their links to the recommendations including:
 - The source of the findings
 - What has emerged
 - Targeted recommendations
 - Considerations to be made if the recommendation is to be implemented

TARGETED RECOMMENDATIONS

*‘Appearances of integrity will be replaced
by honesty and openness about the
challenges of developing and improving
practice.’*

Participant, Part 2 – NMAS Review Survey

MEDIATION AS A PROFESSION

SOURCES



FINDINGS

- Despite community sentiment and the language often used, mediation does not currently possess all that is required to legitimately call itself a profession^{xvi}. E.g., it must have proven its ‘self-regulatory capacity – and been recognised by the combined Australian governments.’^{xvii}
- Consultation revealed that for a large proportion of mediators, it is a low-paid, insecure and low-demand industry that is difficult to enter.^{xviii} Complicating matters further, there do not appear to be professional bodies or associations that represent or advocate on their behalf.

TARGETED RECOMMENDATION A



A. Determine viability, including ethical implications, of progressing status from emerging profession to new profession^{xix}

TARGETED RECOMMENDATION B



B. Adopt the ACCC voluntary industry code framework in preference to any other industry codes

CONSIDERATIONS

- **Recommendation 1** involves determining the viability of progressing mediation to a 'New Profession' status and requires fully-costed modelling for a range of alternatives.
 - The process of becoming a profession is identified by the [Professional Standards Council](#) and must be accounted for in the modelling.
 - The outcome of **Recommendation 1** will establish the parameters and requirements for implementing **Recommendations 2** and **3**.
- If the modelling reveals (**Recommendation 1**) it is timely for mediation to progress to 'New Profession' status, the fully-costed business case and associated strategic plan may be incorporated within the Draft Code's (**Recommendation 2**) reporting requirements.
- If the modelling reveals (**Recommendation 1**) that it is more appropriate for mediation to maintain 'Emerging Profession' status^{xx}, the fully-costed business case and associated strategic plan may still be incorporated within the Draft Code's (**Recommendation 2**) reporting requirements. In addition:
 - The strategic plan might identify barriers to moving beyond emerging profession status and a timeline for addressing these.
 - It is also essential to cease referring to mediation as a profession, rather the industry needs to refer to itself as an emerging profession.
 - Adjust the Code as required to reflect the 'Emerging Profession' status.
- If the modelling reveals (**Recommendation 1**) that the community is better served by focusing on mediator 'professionalism' as opposed to promoting mediation as a 'profession', the fully-costed business case and associated strategic plan may still be incorporated within the Draft Code's (**Recommendation 2**) reporting requirements. In addition:
 - The strategic plan might identify the rationale for mediation for repositioning itself away from professional status.
 - It is essential that the industry stop referring to mediation as a profession.
 - The community may consider repositioning mediation as a critical but auxiliary skill (with or without certification) that a small proportion turns into their occupation.
 - Adjust the Code as required to reflect this change, including the requirement for honest and transparent representation of the career opportunities typically connected with training and accreditation under the Code.
- **Recommendation 2** adopts the ACCC '[Guidelines for developing effective voluntary industry codes of conduct](#)'^{xxi} as the preferred framework for the draft Code. This is important as:
 - Mediators expressed a desire for further information and support in relation to financial viability but in the absence of professional associations, there is a risk that they may inadvertently engage in anti-competitive behaviour.
 - The ACCC guidelines incorporate scope to identify potentially anti-competitive provisions or direct practitioners to information about anti-competitive behaviour – see Commentary within the **Draft Code Part 2: Administration of the Code > Competition Implications**.

SHARED UNDERSTANDING OF THE NMAS

SOURCES



FINDINGS

- Although the MSB and the NMAS is a respected brand^{xxii}, there is a lack of clarity and understanding in relation to:
 - NMAS structure, nomenclature and terminology
 - MSB's role, particularly oversight and support
 - Expectations for training, accreditation and development of practice
- Based on the above, there is a risk that:
 - The purpose of the NMAS which is to promote 'quality, consistency and accountability of NMAS accredited mediators within the diversity of mediation practice in Australia'^{xxiii} is undermined and
 - The NMAS may fall short of serving as a document that 'informs participants in mediation (participants) about what they can expect of an NMAS accredited mediator.'^{xxiv}

TARGETED RECOMMENDATION C



C. Adopt the draft Code modelled on the ACCC voluntary industry code framework, including requirements for administering compliance and the training and accreditation framework (TAF).

CONSIDERATIONS

- The original intention of the NMAS was as 'a voluntary industry and self-regulated accreditation scheme'^{xxv}. In keeping with this, the reviewers also recommend an industry code and have identified that the ACCC guidelines for developing an industry code^{xxvi} provide a coherent framework that addresses many of the modifications and changes identified from the consultation undertaken.
- Guidance and commentary for addressing concerns about clarity and understanding of the NMAS are outlined in **The Draft Code**, including:
 - NMAS structure, nomenclature and terminology (see the **Draft Code Part 1: Definitions and Abbreviations** and **Approaches to Practice**)
 - MSB's role, particularly oversight and support (see the **Draft Code Part 2: Code Administration, Compliance and monitoring and embedded throughout the Draft Code**)
 - Expectations for training, accreditation and development of practice (see the **Draft Code: Training Requirements**)
- For guidance and commentary in relation to this recommendation See **Part 2 of the Draft Code: Objectives**

COMPLAINTS HANDLING

SOURCES



FINDINGS

- The existing complaints system does not meet the expectations of the community, as is not integrated, does not account for the entire system and does not provide an avenue for independent review.

TARGETED RECOMMENDATION D



D. Adopt the draft Code modelled on the ACCC's voluntary industry code framework and its associated three-tier complaints scheme

CONSIDERATIONS

There are several considerations for addressing concerns about complaints handling that are outlined in **The Draft Code**, including:

- Coverage
- Co-existing systems
- Confidentiality
- For guidance and commentary in relation to this recommendation See the **Draft Code Part 2: Administration of the Code > Complaints Handling**



LIMITATIONS OF THE NMAS

SOURCES



FINDINGS

The NMAS was pioneering and is held in high regard for the vital role it has played in the development of mediation in Australia. The current review draws heavily on its strong foundation, yet consultation has revealed that, over time, it now has a number of limitations. For example:

- Mediation does not exist in isolation and needs to be considered in the broader DR landscape.
- Consultation revealed that while facilitative mediation remains an important touchstone, it does not capture all that is happening in the field, such as variation of practice in relation to service or context and evolution of practice with experience.
- What has also been found is that mediator practice is not homogenous and becomes more heterogeneous over time. There is not a direct correlation between the approach the mediator takes and the type of mediator they identify as.
- Even though there are patterns across practitioner types, the approach to practice is varied. However, irrespective of approach, the label of practitioner, etc., there are more similarities across the field of NDR than differences. One of these similarities was that all types of practitioners – (including facilitative mediators) offer a range of information and guidance to some degree^{xxvii}. Context and associated presumptions may be key. E.g. within conciliation, there is a presumption that practitioners have consent to share information or provide guidance in connection with their regime. However, they may still conduct the process in a manner that is consistent with facilitative mediation. Alternatively, a mediator will need to seek consent in order to offer information or guidance.
- There has been a call for an expanded purpose of the NMAS, including:
 - the desire for specialisation to be recognised.
 - Appetite from institutions and services beyond mediation to align themselves with the NMAS.
 - Training and accreditation that:
 - Extends course length to allow:
 - Time to teach and assess skills and knowledge
 - Skills and knowledge in relation to ‘intake’ to be included in the training
 - Accounts for the diversity of practice
 - Provides scope to move beyond the minimum requirement for initial accreditation as practitioners advance in skills and experience
 - Provides a pathway to advanced practitioner status
 - Provides support for new practitioners:
 - Difficulty attaining CPD and practice hours when starting out
 - Limited opportunities to practice
 - Lack of support pathways and opportunities. E.g internships, mentoring
- Consultation has revealed that there was a mismatch between what can be achieved by people who had participated in a short course of training and what was expected of practising mediators. There is also a sense in the mediation community that the Practice Standards are aspirational. Only having one (1) level has meant that a choice needed to be made between the minimum level of practice or aspirational standards.

TARGETED RECOMMENDATION E



E. Adopt the Draft Code's training and accreditation framework (TAF) to account for the evolution of practice.

CONSIDERATIONS

- If this Recommendation is taken up, it will maintain facilitative mediation as a suitable foundation process, while also ensuring it is appropriate to include NDR practitioners in a range of contexts who also may use processes outside of facilitative mediation.
- Even though there are significantly more similarities than differences across NDR practice, it is important to acknowledge the specialist expertise that every area of NDR brings.
- There are a series of relationships and potential relationships that may need to be accounted for dependent on MSB's decision about the recommendations.
- If the TAF is implemented, it is recommended that assessors undertake training in relation to the TAF.
- The draft Code introduces of new membership category for the MSB to incorporate 'Quality Mark' for institutions and services beyond mediation to align themselves with the NMAS
- The TAF legitimately and safely resolves the tension between 'providing quality, consistency and accountability of accredited mediators'^{xxviii} while also providing the framework for practitioners to work towards. Accountability, rigour and aspiration are in-built.
 - Training and accreditation requirements from graduate mediator to master mediator
 - Practice Standards that account for different levels of practice
- If Practice Standards beyond the minimum requirement for accreditation are not implemented there is a continued risk that practitioners are not properly insured because of the tension between needing to appear to be adhering to the standards, but in reality, practising in a different way. E.g providing guidance or advice.^{xxix}
- The TAF includes opportunities for new mediators, engagement with other mediators and responsibilities for experienced mediators accredited at a higher level to support newer, less experienced mediators.
- Further considerations and commentary in relation to this recommendation can be found throughout the **Draft Code Part 2**.

POTENTIAL INCLUSION OF CONCILIATION AND FDR

SOURCES



FINDINGS

- If conciliation and other DR processes are to be included in the NMAS, it must:
 - Account for practitioners under co-existing schemes. E.g FDRPs
 - Acknowledge that the conciliation community has shown interest in a conciliator accreditation system.^{xxx}
 - Recognise a variety of practice and specialisation
- Consultation revealed significantly more similarities than differences across NDR practice.

TARGETED RECOMMENDATION F



F. Adopt the Draft Code, in particular, the training and accreditation framework (TAF)

CONSIDERATIONS

- The Draft Code's training and accreditation framework (TAF) includes scope for practitioners who use a variety of approaches and practice in a variety of contexts. Therefore, it provides scope for the inclusion of other non-determinative dispute resolution practitioners (NDRPs) such as FDRPs and conciliators.
- The draft Code's TAF also provides scope to incorporate a standards framework specific to the approach of conciliation should the conciliation community prefer to proceed with the development of their own professional standards.
- If this Recommendation is taken up, it will maintain facilitative mediation as a suitable foundation process, while also ensuring it is appropriate to include NDR practitioners in a range of contexts who also may use processes outside of facilitative mediation.
- Further considerations and commentary in relation to this recommendation can be found throughout the **Draft Code Part 2**.

CONSIDERATION OF PROVISIONS THAT TAKE ACCOUNT OF ABORIGINAL AND TORRES STRAIT ISLANDER NEEDS AND REQUIREMENTS

SOURCES



FINDINGS

- First Nations individuals, organisations and communities possess invaluable lived expertise that cannot be bought or earned. Those engaging in follow-up or further work must recognise this by centring self-determination.^{xxxii} This means that First Nations individuals with expertise in working with communities on a national level, must lead all processes to ensure community voices are centred.
- To achieve meaningful and effective consultation with First Nations individuals, organisations and communities, it is essential to develop or work with frameworks^{xxxiii} specifically designed to engage with First Nations people and/or people experiencing overlapping marginalisations.
- In recognition of the diverse knowledges, strengths and needs of First Nations people, consultations must be paid and organised to include flexibility as to both timing and methodology, as well as scope to adapt processes as needed throughout the process.

TARGETED RECOMMENDATION G



G. The MSB must work directly with First Nations mediators, taking into account issues raised in the First Nations Consultation Memo.

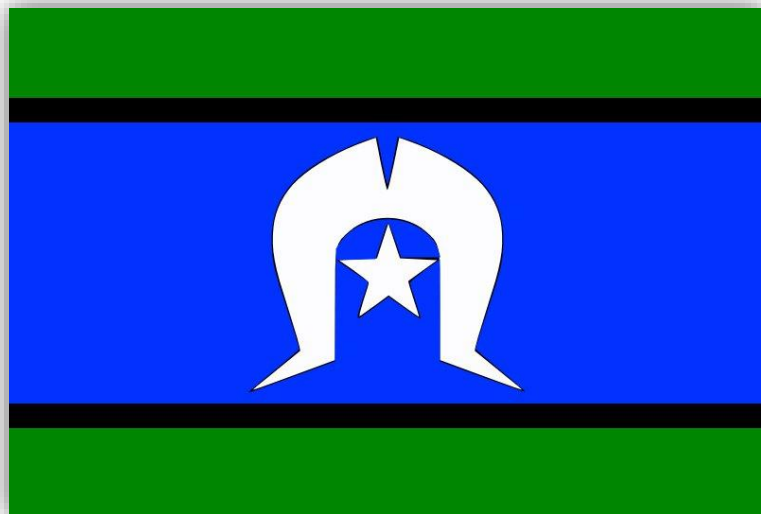
TARGETED RECOMMENDATION H



H. Adopt the Draft Code's training and accreditation framework (TAF). This will ensure there is a training and accreditation framework in place that recognises the value of cultural expertise.

CONSIDERATIONS

- There were six (6) recommended considerations coming from *First Nations Consultation Memo*
 - First Nations-led project, with:
 - i. Diverse knowledges and the necessity of valuing lived cultural expertise recognised in the same way more 'traditional expertise' is recognised
 - ii. Frameworks written or used to facilitate culturally appropriate and meaningful consultation on a nationwide scale
 - iii. Paid consultations
 - iv. Representation from communities around Australia
 - v. Flexible time frames
 - vi. Flexible options to contribute
- The proposed TAF recognises the highly sophisticated expertise of First Nations mediators and provides scope for recognition at the level of specialist or advanced practitioner; however, its use is subject to consultation with Community. **This placeholder is not a substitute for the MSB engaging in direct consultation with First Nations mediators.**



DIVERSITY AND INCLUSION

SOURCES



FINDINGS

- There is an increasing awareness of the importance of diversity and inclusion (D&I) across all industries. Despite best intentions, some attempts to account for D&I are ill-conceived or inappropriate. Mediation is no different, and consultation revealed a wide range of concerns related to D&I, including:
 - Diversity on the MSB
 - D&I considerations in the NMAS are narrow
 - Accessibility in relation to training and the provision of services

TARGETED RECOMMENDATION I



I. Adopt the evidence-based D&I strategies as set out in the Draft Code, including strategies recommended within the ACCC [voluntary industry code framework](#).

CONSIDERATIONS

- There is evidence that recognition of D&I needs improves business outcomes^{xxxiii}.
- Implementation of the recommendations arising out of the review, including the potential for the expanded scope, presents an opportunity to ensure that D&I is embedded at every point — from planning to implementation and ongoing review.
- Within this context, the Draft Code has embedded a D&I strategy into its ‘Objectives’ and also provides guidance on implementing a contextualised and intersectional approach.
- Failure to draw on the expertise and lived experiences within the D&I field runs the risk of undermining attempts to properly account for D&I. Resources include, but are not limited to:
 - [Intersectionality Resource Guide and Toolkit](#)^{xxxiv}
 - [Australian Human Rights Commission](#)^{xxxv}
 - [Kelly Williams](#) – Indigenous and Diversity HR Case Advocate at the Australian Broadcasting Corporation (ABC)
 -
- For further guidance and commentary in relation to this recommendation, see **the Draft Code: Introduction to the Code > Objectives**.

SITUATING THE STANDARDS

SOURCES



FINDINGS

WHAT HAS EMERGED

- The DR community exists beyond Australia and some considerations are worthwhile exploring to ensure the NMAS has global currency.
- Australia is a signatory of the Singapore Convention.
- There is international appetite to professionalise the mediation industry.^{xxxvi}
- Australia makes a distinction between mediation and conciliation processes. Internationally, this difference is not as distinct and the terms are ‘interchangeable’ in some contexts.^{xxxvii}

TARGETED RECOMMENDATION J



J. Adopt the draft Code definitions

CONSIDERATIONS

- To future-proof the draft Code, definitions and concepts have been cross-referenced with the Singapore Convention definitions. It is recommended that this language and the definitions in the draft Code be used to situate the NMAS more broadly.
 - Align the Code to the Singapore Convention by either:
 - Defining ‘mediation’ as a broad term that captures other processes such as conciliation
 - This may not be useful if the MSB wishes to include the conciliation in the NMAS, as the conciliation community has identified a distinction between processes^{xxxviii} or
 - Use the term Non-determinative/‘Non-adjudicatory’^{xxxix} dispute resolution (NDR) to refer to mediation and other processes more broadly.
 - This is recommended, and as such has been included in the Draft Code
- Refer to the comparative report of accreditation systems internationally via the ‘Situating the Standards’ doc provided by reviewers.
- The reviewers have organised for the NMAS Review findings and recommendations to undergo international review.
- For further guidance and commentary in relation to this recommendation, see **the Draft Code**.

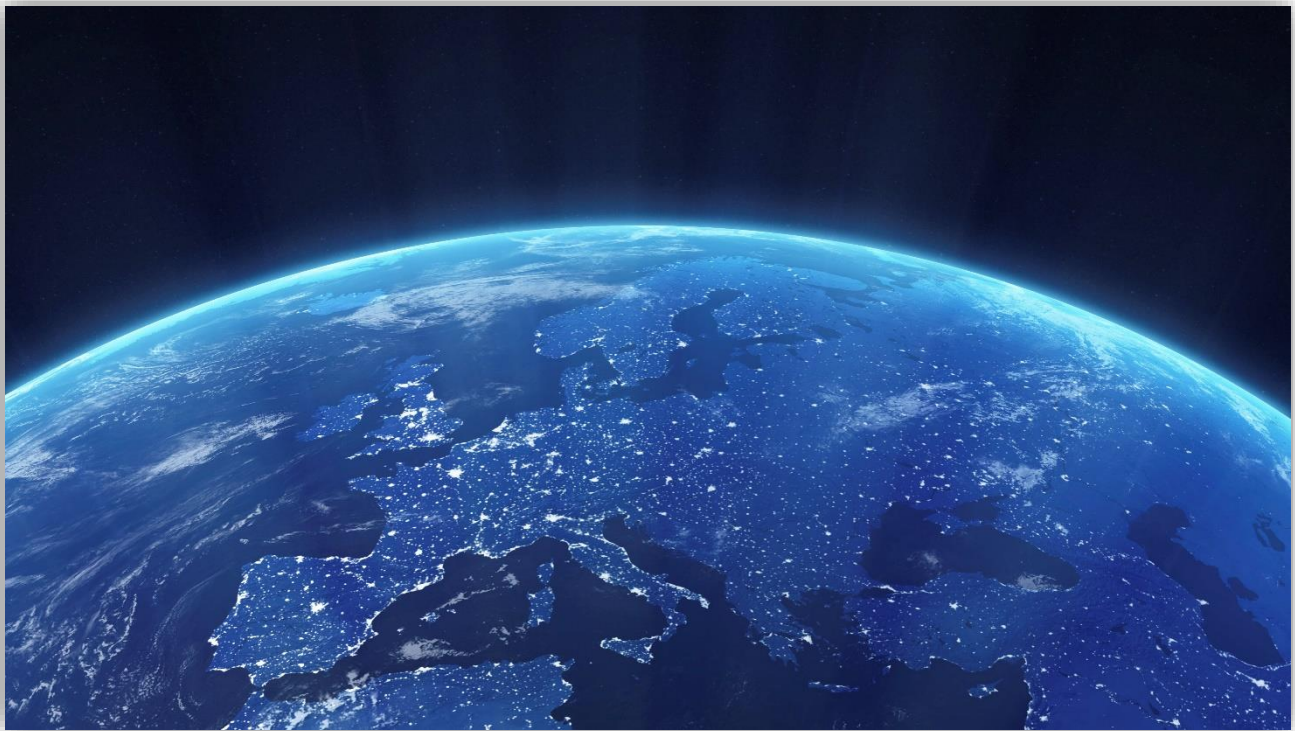



TABLE OF RESOURCES

*‘Extra levels of accreditation should be offered
by the MSB approving them, not RMABs
approving them’*

Participant, Part 2 – NMAS Review Survey

RESOURCE NAME	DESCRIPTION	PROVIDED TO MSB
NMAS Review 2020-22 Findings and Recommendations	This document	
Proposed modifications and changes mapped against current NMAS – NMAS Review 2020-22	Includes recommended modifications and changes and where to find them in The Draft Code .	
The Draft Code – NMAS Review 2020-22	Includes: <ul style="list-style-type: none"> • The Code (modelled on the ACCC Guidelines for effective voluntary industry codes^{xl}) • Training and Accreditation Framework (TAF) • Professional Practice Standards (evidence-based standards drawn from the findings of the NMAS Review Survey) • Code of Ethics 	
First Nations Consultation Memo – NMAS Review 2020-22	Findings and recommendations provided by the NMAS Review team’s First Nations Stakeholder Engagement Manager.	
Specialist Provider of Dispute Resolution Services (SPDR) – new MSB membership classification pptx	Overview and rationale for the new SPDRS service provider classification	
Situating the standards within broader DR Field report- NMAS Review 2020-22	An international comparative analysis of a variety of mediation accreditation systems across the globe.	
The NMAS Review Hub www.nmasreview.com.au	Specifically developed by Resolution Resources to provide transparency and accessibility of information related to the NMAS Review. Includes: <ul style="list-style-type: none"> • Information about the review and the approach • Ways to become involved in the consultation process such as: <ul style="list-style-type: none"> ○ Invitations and links to participate in workshops and surveys ○ Materials and resources for workshops 	N/A

- [News](#)
- [Interview videos](#)
- Articles and blogposts
- Updates sent to subscribers during the review
- Links to [reports](#) coming out of the review

NMAS Review 2020–21 Effectiveness Survey Reports

Part 1 – Participants

Part 2 – Perceived Effectiveness

Part 3 – Other Factors

Part 4 – Mediator Styles (Forthcoming)

Findings from the NMAS Effectiveness Survey, including:

- findings that prompted further investigation via the NMAS Review Survey.

The reports are available on [NMAS Review Hub](#) or [MSB Website](#).



Mapping the MSB Website

Suggested corrections to the MSB website to provide consistency with the current NMAS.

Not completed for the NMAS as set out in the Draft Code



Mapping the NMAS against FDRP Regulations and other Frameworks – NMAS Review 2020-22

Comparison of FDR accreditation requirements, AQF levels and the NMAS Approval Standards



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<<https://www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/minimum-wages>>
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