

2 March 2023

The NMAS Review: the state of progress

This update on the review of the National Mediator Accreditation System follows earlier releases of October and December 2022. The purpose is to explain the present state of the Board's response to the review, and the next steps. We will continue to provide further updates as the Board's work progresses.

Where we are

As the Board chose to amend or redraft the NMAS rather than accept the recommendation to establish a Code administered by a Code Administration Committee, much of the proposed regulatory material provided by Resolution Resources was not suitable. The Board's Review Committee has instead drafted a proposed replacement for the NMAS, drawing on the Resolution Resources documents and the findings of the review. Those findings in turn were based on research and consultation with the mediation community, including surveys and a series of workshops.

The task of the Board, working in the first instance through its Review Committee, is to take the results of the review and turn them into a working and workable set of standards and rules.

The proposed NMAS replacement will be a more comprehensive document than the existing System, with more detail in such matters as training and accreditation requirements, and more specificity where required.

That draft has reached the point where it is appropriate to have it reviewed by an identified drafting expert. This is not for the purpose of reconsidering the choices made, but rather for the purpose of ensuring that those choices have been given effect.

Releasing the text of the proposed document(s) earlier would not have been helpful, as significant decisions had to be made, and a great deal of drafting and re-drafting done, before the text reaches sufficient maturity and clarity to be exposed.

As well as commissioning that drafting review, the Board has resolved to instruct solicitors to advise on the required changes to the MSB constitution. Those changes fall into two categories. First, the Review recommended that the classes of members of Mediator Standards Board Limited be simplified: more on this later. Secondly, the authority of the Board to make changes to the NMAS as by-laws or

rules of the company, rather than as part of the constitution, needs to be reinforced.

Keeping in touch

So that member organisations will have adequate notice of how changes will affect them and their members, there will be a series of these communications, each outlining proposed changes in a particular area. Once the drafting review is concluded and it is clear what constitutional changes are needed, there will be further co-ordination with member bodies as to the details of implementation. The Board is very conscious that members will require sufficient notice to respond before changes come into effect. For example, if training and assessment requirements are altered, training organisations will need time to adjust course content, duration and costs.

Let me set out the framework of what is proposed as to levels of accreditation, and specialisation. I will then outline the next steps.

Levels

The proposal is that there will be four levels of accreditation:

- a) Accredited Mediator
- b) Advanced Mediator
- c) Specialist Practitioner
- d) Leading Practitioner.

The first two levels should be considered first. The Review Committee has been conscious of several matters that are clear both from the formal findings of the Review and from contact with members of the profession.

One is that the present requirements of the NMAS Approval Standards for accreditation do not ensure that persons passing assessment will be capable of practising at the standards required by the Practice Standards. That would seem to require some strengthening of the Approval Standards.

Secondly, there is a consistent commentary that newly-qualified mediators have difficulty obtaining enough work to qualify for periodic re-accreditation.

Thirdly, there appears to be a demand from people who want 'to do a mediation course' but who do not necessarily intend to practise as mediators. This group includes lawyers who see a mediation course as equipping them to be more competent as representatives of parties in mediation. It may also include managers in organisations that employ or use mediators.

The draft seeks to address those tensions as follows. The initial requirement is for completion of a Certificate of Training. That will be a 45-hour course. There is then a separate Certificate of Assessment. Separating these means that those who wish to learn about mediation but not necessarily practise can complete the training component only.

Completion of the training and assessment components leads to qualification for registration as an Accredited Mediator. That registration will need to be renewed

every two years, as at present. However, the practice requirements to qualify for renewal will give more credit than at present for such learning experiences as co-mediation, or attending as an observer. This is aimed both at making it easier for newly-qualified mediators to obtain qualifying experience and at encouraging mentorship and other forms of support, to the benefit of all.

Qualification as an Advanced Mediator requires, in addition to the requirements of being an Accredited Mediator, the successful completion of a Practicum Certificate of Training. This will be a further 12-hour workshop course delivered in modules over not more than two months. Renewal of accreditation as Advanced Mediator will require 40 hours of practice in the preceding two years.

The category of Specialist Practitioner is intended to provide recognition for those who practise in a mode that, while is built on the basic skills of the mediator, adds particular expertise in an identifiable field of dispute resolution. It will be for the Board, on the application of an interested group, to identify and recognise areas of specialisation. The classes are not presently prescribed but the candidates for recognition might include Family Dispute Resolution Practitioners, workplace conciliators, or indigenous peacemakers.

The category of Specialist Practitioner might therefore be thought of as a lateral area of particular practice at an advanced level, rather than necessarily a higher grade than Advanced Mediator.

The level of Leading Practitioner will recognise not merely eminence as a practitioner, but contributions to the profession, for example by mentoring, coaching and related services, or contributions to mediation literature. It is anticipated that this will require a significant period of practice experience.

It will not necessarily be the case that all categories will be implemented at once.

Another matter very much in the consciousness of the Board is that there need to be appropriate arrangements for 'grand-parenting' presently accredited mediators into the new system at the right level. How to do that is very much a matter of detail, but be assured that it is on our minds.

Next steps

I have mentioned constitutional changes. Amendments to the constitution of MSB Limited may be made only by special resolution at a general meeting of the company. The anticipated timing is that in the first half of this calendar year the Board will call an extraordinary general meeting. That will be for the purpose of considering the proposed changes to the constitution necessary or convenient to facilitate the implementation of a NMAS replacement as rules or by-laws. The detail of those changes must await the advice mentioned. It is hoped that by the time of that meeting the text of the whole of the proposed new system will have been made available to members.

The purpose of the extraordinary meeting will strictly not be to approve that new system, but to give the Board the power to promulgate it as rules. That means that,

following the extraordinary meeting, further consultation with the members will be possible to fine-tune the details.

Some members of the community have expressed surprise that more has not been released about the review. I hope that the earlier releases, and this, explain why that has not been sensibly possible. The Review Committee has been refreshed by the appointment of new board members Jodie Grant, Joanne Law and Amber Williams. They have joined the continuing members Peter Condliffe, Stephen Dickinson, and me as Chair of the Board, ex officio. It is perhaps telling that all the new members have expressed surprised at the amount of work the Committee has done to bring matters to this point.

We will continue to keep you all informed.

Regards

A handwritten signature in black ink that reads "Christopher Boyle". The signature is written in a cursive, flowing style.

Christopher Boyle | Mediator Standards Board - Chair

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