

ADVANCED MEDIATION SOLUTIONS
“Moving Families Forward”

ETHICAL STANDARDS FOR MEDIATORS POLICY

1.0 PURPOSE

The purpose of this policy is to provide staff members with the tools required to perform their duties to a high standard, while ensuring that the ethical standards of practice are followed and applied in the performance of mediation as identified in industry best practice.

Professional bodies may have differing requirements it is important to check the organisations requirements to ensure compliance under your membership.

The organisation has adopted the Law Council of Australia’s Ethical standards for Mediators Guidelines to provide clear direction in professional and ethical behaviours.

2.0 OBJECTIVES

The objectives of the Organisation are to:

- comply with all relevant legislation and standards relating to service delivery
- provide mediators with the relevant training and clear direction with regard to their professional conduct in discharging their duties.
- deliver a quality, efficient, safe and ethical service to our clients.

3.0 ACCOUNTABILITY

The Manager responsible for FDRM is accountable for the updating and training of staff in line with the Organisations requirements. All Family Dispute Resolution Mediators are accountable for following this policy, regularly updating their professional knowledge, maintaining all registrations, displaying ethical behaviours in their duties, and ensuring that all correspondence meets the organisation’s communication standards.

4.0 LEGISLATIVE COMPLIANCE

The policy is underpinned by the following legislation to which employees must follow on all occasions:

1. Family Law Act 1975
2. Qld Domestic and Family Violence Protection Act 2012
3. Qld Domestic and Family Violence Protection Rules 2014
4. Family Law (Family Dispute Resolution Practitioners) Regulations 2008
5. Child Protection Act 1999
6. Child Protection Regulation 2014
7. Information Privacy Act 1999
8. Information Privacy Regulations 1999
9. Dispute Resolution Centres Act 1990
10. Ethical guidelines for Mediators 2011 – Law Council of Australia - www.lawcouncil.asn.au
11. National Mediator Accreditation Standards - msb.org.au

All updated legislation can be found at www.apps.legislation.qld.gov.au

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5.0 NON COMPLIANCE

Staff who are found to be in contravention of this policy will be disciplined in line with the Organisation’s disciplinary policy.

6.0 FUNCTIONS OF THE POLICY

The adopted guidelines of conduct for mediators are intended to perform three major functions to:

- Ensure appropriate professional and ethical behaviours are demonstrated in mediation
- inform the mediating parties of what they should expect; and
- promote public confidence in mediation as a process for resolving disputes

7.0 ETHICAL BEHAVIOUR THROUGHOUT THE PROCESS

Mediation is a process in which an impartial person - a mediator - facilitates the resolution of a dispute by promoting uncoerced agreement by the parties to the dispute.

A mediator facilitates communication, promotes understanding, assists the parties to identify their needs and interests, and uses creative problem solving techniques to enable the parties to reach their own agreement.

A mediator should explore with the parties prior to the mediation commencing that each party will have the necessary ability to conclude any settlement in a safe manner.

The ethical considerations below form the behaviours which must be demonstrated before and throughout the process.

7.1 IMPARTIALITY

A mediator may mediate only those matters in which the mediator can remain impartial and even handed. If at any time the mediator is unable to conduct the process in an impartial manner the mediator should withdraw.

Accordingly, a mediator must avoid:

- (i) partiality or prejudice; and
- (ii) conduct that gives any appearance of partiality or prejudice.

7.2 CONFLICTS OF INTEREST

Before the mediation begins, the mediator must disclose all actual and potential conflicts of interest known to the mediator. The mediator should:

- (i) discuss any circumstances that may, or may be seen to, affect the mediator’s independence or impartiality; and
- (ii) at all times be transparent about the mediator’s relations with the parties in the mediation process.

Disclosure must also be made if conflicts arise during the mediation.

After making disclosure the mediator may proceed with the mediation if all parties agree and the mediator is satisfied that the conflict or perception of conflict will not preclude the proper discharge of the mediator's duties.

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The mediator must be certain of:

- (i) the parties’ agreement; and
- (ii) the mediator’s ability to undertake the mediation with independence and neutrality so as to ensure impartiality.

7.3 COMPETENCE

A mediator must not mediate unless the mediator has the necessary competence to do so and to satisfy the reasonable expectations of the parties.

A person who agrees to act as a mediator holds out to the parties and the public that she or he has the competence to mediate effectively.

7.4 CONFIDENTIALITY

Subject to the requirements of the law a mediator must maintain the confidentiality required by the parties.

7.5 TERMINATION OF MEDIATION

A mediator may terminate the mediation if the mediator considers that:

- (i) any party is abusing the process; or
- (ii) there is no reasonable prospect of settlement.

The mediator if appropriate should inform the parties, and may terminate the mediation if:

- (i) a settlement is being reached that to the mediator appears illegal having regard to the circumstances of the dispute; or
- (ii) the mediator considers that continuing the mediation is unlikely to result in a settlement.

7.6 RECORDING SETTLEMENT

If the mediation results in a settlement between the parties, the mediator should encourage the parties to continue the mediation until the parties have:

- (i) addressed any enforceability issues; and
- (ii) recorded terms of settlement in writing.

7.7 PUBLICITY AND ADVERTISING

A mediator must not engage in misleading or deceptive publicity or advertising.

A mediator must not make any false or misleading statement including statements or claims as to the mediation process, its costs and benefits, or the mediator's role, skills, or competence.

A mediator must not arrange for publicity or advertising without the expressed written permission of the board of directors.

7.8 FEES

A mediator must fully disclose the organisations fee scale to the parties prior to the commencement of the intake process.

8.0 DEFINITIONS AND ABBREVIATIONS

Nil

9.0 RELATED DOCUMENTS

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MED HR FDRP PD - Position Description FDR Practitioner
MED HR FDRPS PD - Position Description FDRP Supervisor
HR FDRP/S PM – Performance Management and Appraisal policy
MED CASE – Case Management Guidelines
HR COND 001 – Human Resources Code of Conduct
HR DIS 001 - Human Resources Disciplinary Policy
HR PUB 001 – Human Resources Communication and Representation Policy

10.0 SUPPORTING DOCUMENTS

1. Ethical guidelines for Mediators 2011 – Law Council of Australia - www.lawcouncil.asn.au
2. National Mediator Accreditation Standards - msb.org.au
3. Model Standards of conduct for Mediators - www.mediate.com