



LAWYER MEDIATOR ACCREDITATION SCHEME

The Law Society of New South Wales Lawyer Mediator Accreditation Scheme (LMA Scheme)

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Part 1 Introduction

This scheme comprises the accreditation requirements and practice standards for mediators under The Law Society of New South Wales (“LSNSW”) Lawyer Mediator Accreditation Scheme (“LMA Scheme”).

Mediation is one of a number of different dispute resolution mechanisms that is used to resolve a broad range of conflicts within a variety of settings. In mediation, an impartial third party facilitates communication and negotiation between the parties to a dispute and promotes voluntary decision making.

There are various purposes of mediation, including giving the parties the chance to identify and clarify issues, understand each other’s perspectives, identify each other’s interests, explore possible alternatives, and reach an outcome that is mutually satisfactory.

The LMA Scheme is designed to protect consumers who are parties to a dispute seeking a competent mediator. These requirements and standards serve three main purposes:

1. To guide mediators in their ongoing conduct and practice;
2. To advise mediating parties and parties considering mediation, of how a mediator should conduct themselves, and how a mediation should be conducted; and
3. To ensure public confidence in mediation as a dispute resolution process.

This scheme has been independently developed by The Law Society of New South Wales, and is not otherwise produced, approved, sponsored or endorsed by, or otherwise affiliated with any other mediation or dispute resolution standards organisation.

Structure

The LMA Scheme comprises the following:

- *Mediator Accreditation Requirements:* these set out the training and other qualifications required to be an accredited mediator under the LMA Scheme, and to be reaccredited; and
- *Mediation Practice Standards:* these set out the ongoing requirements of a LMA Scheme accredited mediator in relation to practice and competency.

Part 2 Mediator Accreditation Requirements

1 Application

- 1.1 The *Mediator Accreditation Requirements* apply to any member who wishes to be accredited as a mediator under the LMA Scheme (“mediator”).
- 1.2 The *Mediator Accreditation Requirements* outline the training and other qualifications required to be accredited as a mediator under the LMA Scheme, including reaccreditation.

2 Accreditation Requirements

- 2.1 A member must:

- (a) Possess a current Australian Practising Certificate to engage in legal practice;
- (b) Maintain membership of the LSNSW for their accreditation period;
- (c) Be covered by relevant professional indemnity insurance, or have statutory immunity;
- (d) Comply with the *Mediation Practice Standards*; and
- (e) Pay the LSNSW prescribed LMA Scheme accreditation fee.

- 2.2 A member must have completed one of the following mediation training programs:

- (a) Australian Disputes Centre – Accelerated Mediation Training Programme.
- (b) Australian Institute of Family Law Arbitrators and Mediators – Mediation Training and Assessment Course.
- (c) College of Law – Nationally Accredited Mediator Training Program.
- (d) Mediation Institute – Mediator Training and Assessment Course.
- (e) Resolution Institute – Mediation Training Course.

A member must apply for accreditation within six months of receiving formal notification from the mediation training course provider that they have met the assessment requirements of that training program.

- 2.3 If a member has current accreditation under NMAS/AMDRAS, evidence of this will suffice in lieu of Section 2.2.

3 Reaccreditation Requirements

- 3.1 A mediator who wishes to renew their accreditation must:

- (a) Meet the requirements set out in Section 2.1 above;
- (b) Conduct, within the two years preceding their application for renewal, at least 25 hours of mediation, co-mediation or conciliation;
- (c) Engage in continuing professional development (“CPD”) as described in Section 3.2, below; and
- (d) Provide evidence satisfactory to the LSNSW of their compliance with Section 3.1(b) and (c).

- 3.2 A mediator must engage in CPD of at least 25 hours over 2 years that contributes to the knowledge, skills and ethical principles contained in the *Mediation Practice Standards*. This may be made up as follows:

Nature of activity (must be related to mediation)	CPD point allocation
Participating in training seminars and workshops	Up to 20 hours
Attending conferences	Up to 15 hours
Providing supervision or receiving supervision	Up to 15 hours
Presenting at conferences or training sessions	Up to 15 hours
Credit for attending mediation related CPD	Up to 10 hours
Participating as a client representative in mediation	Up to 8 hours
Role playing for trainee mediators (as part of one of the mediation training programs in Section 2.2)	Up to 8 hours
Conducting court referred pro bono mediation	Up to 8 hours
Other – such activities as may be approved by the LSNSW on application	Up to 5 hours

- 3.3 A mediator must meet these requirements prior to their current accreditation ending. Failure to apply for reaccreditation will cause their accreditation to automatically lapse. Once lapsed, an applicant must meet the full requirements of Section 2 above in order to be reaccredited.

4 Suspension

- 4.1 If a mediator does not comply with the *Mediation Practice Standards*, the LSNSW may suspend the mediator's accreditation. The LSNSW will act fairly and impartially when considering whether or not to suspend the mediator's accreditation and, in accordance with the rules of procedural fairness, will give a person the opportunity to be heard before it makes a decision. The LSNSW may, depending on the circumstances and in its discretion, set out conditions that the mediator must meet before they may apply to reinstate their accreditation.
- 4.2 The LSNSW will remove from the LSNSW Register the mediator's name whose accreditation it has suspended.

5 Reinstatement of accreditation

- 5.1 The LSNSW will reinstate a suspended member's accreditation from the date on which the LSNSW determines that the member has satisfied the conditions set in Section 4.1 (if any). Where suspension is imposed without conditions, the reinstatement of a member will be at the discretion of the LSNSW.

Part 3 Mediation Practice Standards

1 Application

1.1 The *Mediation Practice Standards*:

- (a) Set out the ongoing requirements relating to practice and competence applicable to a LMA Scheme accredited mediator.
- (b) Inform the expectations of participants and others in relation to a LMA Scheme accredited mediator and the mediation process.

1.2 To the extent that there is an inconsistency between a provision of the *Mediation Practice Standards* and a provision of the Legal Profession Uniform Law or the Legal Profession Uniform Law Australian Solicitors Conduct Rules (together, “**Uniform Law**”), the Uniform Law will prevail over the *Mediation Practice Standards*.

2 Competency Requirements

2.1 Mediators must be fully qualified to address the specific issues in a mediation and recognise if there are matters beyond their qualifications, education and experience.

2.2 The mediator must inform the participants if the mediator’s expertise cannot meet the needs of one or more participants. In those circumstances, to ensure that the mediation is carried out properly, the mediator should offer to secure additional resources, or consult with or include additional professionals in the mediation process. The mediator must make appropriate referrals for the participants, if the mediation cannot continue.

2.3 A mediator must communicate with participants conscientiously and in a timely fashion throughout the mediation process.

2.4 Mediators must provide an inclusive environment that takes into account factors such as sex, sexual orientation, gender identity, gender expression, family diversity, disability, religion, race, ethnic origin, or citizenship.

3 Requisite mediator ethical standards

3.1 A mediator must observe in their practice the ethical principles outlined below:

- (a) Impartiality – including the avoidance of conflicts of interest.
- (b) Confidentiality, privacy and applicable mandatory reporting obligations.
- (c) Obtaining the informed consent of participants.
- (d) Competency, integrity and accountability.

3.2 A mediator must avoid any conflict of interest, or the appearance of one, both during and after mediation. A conflict of interest or appearance of a conflict of interest can be caused by:

- (a) The mediator's involvement with the subject matter of the dispute.
- (b) The mediator’s relationship with a participant (whether personal or professional, or past or present), in a way that reasonably calls into question the mediator's impartiality.

4 Conducting mediation: Preliminary conference or intake

- 4.1 In the preliminary conference or intake, the mediator must inform the participants of the following:
- (a) A description of the mediation process, including the steps involved, such as private sessions, joint sessions and shuttle negotiations; and
 - (b) How to file a formal complaint regarding the mediator, as set out in Part 4 below.
- 4.2 The preliminary conference or intake must include:
- (a) Providing participants with information about the *Mediation Practice Standards*;
 - (b) Assessing the suitability of mediation and determining necessary adjustments, such as introducing safeguards in cases that may involve violence, or using an interpreter or a co-mediation model for culturally and linguistically diverse communities;
 - (c) Deciding on venue, timing and other practical issues;
 - (d) Identifying participants and the extent of their decision-making authority;
 - (e) Confirming each participant's agreement to proceed with mediation;
 - (f) Explaining to participants the nature and content of any mediation agreement, including costs, payment arrangements and confidentiality;
 - (g) Advising participants on how the mediation can be suspended or terminated;
 - (h) Informing participants about the various roles, including those of the participants, representatives, interpreters, support persons and any other attendees;
 - (i) Referring participants to other sources of information, advice or support, where appropriate.

5 Conducting mediation: Confidentiality

- 5.1 A mediator will discuss confidentiality with the participants at the beginning of the mediation and obtain their consent to any communication by the mediator that involves the disclosure of confidential information.
- 5.2 A mediator must keep all information provided during the mediation confidential, except in the following circumstances:
- (a) When disclosure is required by law;
 - (b) When the participant to whom the confidentiality is owed gives consent for disclosure;
 - (c) When disclosure is permitted by professional guidelines or ethical considerations; or
 - (d) When it is reasonably necessary to prevent an actual or potential threat to human life or safety.
- 5.3 A mediator is not obligated to retain documents related to the mediation but may choose to do so, especially in cases involving duty-of-care or duty-to-warn issues. The mediator must ensure that written and/or electronic notes of the mediation are stored confidentially and/or destroyed securely.

6 Conducting mediation: The mediation session

- 6.1 Ordinarily, the mediation includes a joint session where participants directly communicate with each other. The purpose of this is to identify, make clear and better understand interests, issues and underlying needs. The mediation may also involve private sessions and shuttle negotiations.
- 6.2 All discussions during the mediation are confidential, subject to the exceptions in this

Section, or Section 5.2. Anything said or produced in evidence at a mediation cannot be used in a later hearing, except in exceptional circumstances. Mediation is conducted “without prejudice”, meaning nothing said at mediation can be used in evidence in a later trial without a party’s consent.

Exceptions to confidentiality occur if:

- (a) There is a serious and imminent threat to the life or health of a person;
- (b) The mediator is assisting as an independent children’s lawyer to properly represent a child’s interests; or
- (c) A participant gives their consent to the information being disclosed.

6.3 The mediator may conduct the mediation over multiple meetings and locations.

6.4 The mediation may conclude with or without the participants reaching an agreement.

7 Conducting mediation: Suspending the mediation session

7.1 A mediator may suspend or terminate the mediation in the following circumstances:

- (a) The mediator reasonably believes that the safety of one or more participants is at risk.
- (b) One or more participants do not engage in the mediation in good faith.
- (c) One or more participants do not participate or cease to participate in the mediation.

7.2 To the extent possible, participants should be notified by the mediator, if the mediator intends to suspend or terminate the mediation.

7.3 Prior to terminating, procedural options should be discussed between the mediator and the participants. If necessary or appropriate, the mediator should advise participants to seek independent legal advice.

7.4 A mediator must clearly and promptly communicate to the participants that the mediation has been terminated.

8 Conducting mediation: Managing participants’ wellbeing during mediation

8.1 A mediator should manage the mediation having regard to the changing balances of power in mediation.

8.2 A mediator must prioritise participant safety and wellbeing, and take precautions, including:

- (a) Establishing guidelines to ensure participants behave appropriately;
- (b) Utilising private sessions, technology, or other protective measures as needed;
- (c) Implementing appropriate security protocols for the mediation process;
- (d) Allowing a participant’s support person or representative to attend the mediation; and
- (e) Suspending or terminating the mediation while taking appropriate steps to ensure the safety and wellbeing of participants.

9 Conducting mediation: Independence, impartiality and procedural fairness

9.1 A mediator must treat all participants with respect, fairness and equality, and must act in an impartial, independent and neutral manner. If a mediator believes they cannot maintain this, the mediator must notify the participants and offer to withdraw from the mediation. Factors that may affect a mediator’s independence, neutrality, impartiality or fairness or factors that may reasonably give rise to an appearance of partiality or bias, include:

- (a) A relationship with any of the parties or their representatives (including past or future, or business, financial, professional or personal) about which the mediator is aware.
- (b) Financial or personal interests in the outcome of the mediation.
- (c) The mediator endorsing or promoting a particular product or service, or giving legal advice to a participant.

10 Mediation rules regarding charging for services

- 10.1 A mediator must ensure that participants have agreed on the fees and charges payable for the mediation, including the apportionment of such fees and charges between them.
- 10.2 A mediator shall not charge fees in a manner that impairs the mediator's impartiality. For example, a mediator may accept unequal fee payments from the parties but should not do so if the arrangement may negatively impact the mediator's impartiality.
- 10.3 Fees must not be determined or calculated in a way that could influence the manner in which the mediator conducts the mediation, including by being based on the outcome of a mediation.
- 10.4 If one or more participants pay any fees or charges in advance, and the fees or charges payable for the mediation are less than such advance payments, the mediator must promptly refund the excess when the mediation ends.

11 Mediator's commitment to the advancement of mediation

- 11.1 A mediator should conduct themselves in a manner that advances the practice of mediation, including by:
 - (a) Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.
 - (b) Encouraging diversity within the field.
 - (c) Using their best endeavours to make mediation accessible to those who wish to use it, such as by charging a reduced rate or on a pro bono basis.
 - (d) Helping new mediators by providing networking, mentoring and training opportunities.

Part 4 Additional LMA Scheme Information

1 LMA Scheme

- 1.1 This scheme has been independently developed by The Law Society of New South Wales, and is not produced, approved, sponsored or endorsed by, or otherwise affiliated with, any other mediation or dispute resolution standards organisation.

2 LSNSW Register

- 2.1 The LSNSW Register is the authoritative list of all mediators accredited under the LMA Scheme. It allows confirmation of which mediators are accredited under the LMA Scheme by consumers, advisers and referring agents.
- 2.2 The LSNSW will send a reminder to accredited mediators when their accreditation is due for renewal.
- 2.3 The particulars of all mediators accredited by the LMA Scheme will be uploaded to the LSNSW Register by the LSNSW, which will also maintain the currency of that list.
- 2.4 A member who meets the requirements of the LMA Scheme will be accredited for two years.
- 2.5 If a mediator has not had their accreditation renewed within two months of their accreditation expiry date, then their name will be removed from the LSNSW Register.

3 Complaints Handling

- 3.1 Information on how to file a formal complaint regarding a mediator:
- (a) The Office of the NSW Legal Services Commissioner ("OLSC") receives all complaints about solicitors practising in New South Wales, including solicitor mediators.
 - (b) The OLSC also attempts to resolve consumer matters and costs disputes between clients and their solicitor in relation to complaints involving costs and billing.
 - (c) Any questions about the complaint process are to be directed to the OLSC via their Inquiry Line on 1800 242 958 or (02) 9377 1800.

4 LMA Scheme Logo Usage

- 4.1 The logo can be used by lawyer mediators accredited under the LMA Scheme. If a lawyer ceases to be accredited, then the lawyer must stop using the logo. To protect the integrity of the logo, it is not to be redrawn, modified, altered, added to or distorted in any way.

5 Waiver by the LSNSW

- 5.1 The LSNSW may, conditionally or otherwise, waive compliance with any provision of the *Mediator Accreditation Requirements* and the *Mediation Practice Standards* on application.