



# ACCREDITATION AND RE-ACCREDITATION AS A MEDIATOR AT THE QUEENSLAND BAR

## PREAMBLE

1. In March 1997 the Council of Chief Justices of Australia and New Zealand set out a '*Declaration of the Principles*' related to Court annexed mediation. The Declaration included the following principles:
  - a. Mediation is an integral part of the Courts' adjudicative processes and the '*shadow of the Court*' promotes resolution.
  - b. Mediation ought to extend to appeals in appropriate cases.
  - c. Mediators provided by the Court must be suitably qualified and experienced. They should possess a high level of skill which is regularly assessed and updated.
  - d. Mediators must have appropriate statutory protection and immunity from prosecution.
2. In April 2001 NADRAC released 'A Framework for ADR Standards' which set out a number of recommendations. The recommendations included a proposal for a requirement that those responsible for accrediting ADR practitioners:
  - a. clearly define the level of competence and responsibility recognized through the accreditation;
  - b. use valid and reliable assessment procedures;
  - c. provide monitoring, review or audit processes;
  - d. provide fairness to those seeking accreditation;
  - e. ensure that accreditation processes are transparent and publicly available; and
  - f. provide consistent, comparable and similar accreditation regimes.
3. In line with these developments, and other anticipated developments in the area of mediator accreditation, the Queensland Bar considers that it is important at this time to clarify and increase the requirements for accreditation and introduce requirements for re-accreditation as a mediator.
4. There are presently about 150 barristers who have been "accredited" by the Queensland Bar. There are also barristers who are not accredited but who undertake work as mediators as a part of their practice.
5. The attached document sets out rules for initial accreditation as a mediator and for re-accreditation as a mediator by the Bar Association of Queensland.
6. Accreditation in perpetuity is no longer considered appropriate for the Queensland Bar accreditation scheme. Biennial re-accreditation is necessary to maintain professional standards in respect to mediation services provided by barristers at the Queensland Bar.



# RULES FOR ACCREDITATION AND RE-ACCREDITATION AS A MEDIATOR

## 1. ACCREDITATION

From 1 July 2007, a Queensland barrister who seeks accreditation as an accredited mediator will need to meet the following requirements.

### 1.1 Current Practising Certificate

Every *accredited mediator* must hold a current Practising Certificate issued by the Bar Association of Queensland.

### 1.2 Training Required

Every *accredited mediator* must have completed the following minimum training:

- (a) Satisfactory completion of a course in mediation approved by the Alternative Dispute Resolution Committee of the Bar Association of Queensland (“the ADR Committee”)<sup>1</sup>; and
- (b) (i) Attendance at not less than three hours of continuing legal education on the topic of alternative dispute resolution approved by the Bar Association of Queensland<sup>2</sup>; or  
(ii) Conducting six (6) mediations within two years of completing the course set out in sub-rule 1.2 (a) above.

### 1.3 Professional Practice Criteria

Every *accredited mediator* must have the following professional experience:

- (a) A minimum of **five years full time** practice as a legal practitioner in Australia or five years experience in another profession relevant to the practice of mediation<sup>3</sup> or the mediator’s proposed area of mediation practice<sup>4</sup>;

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<sup>1</sup> The course must:

1. Be conducted by at least two trainers who meet the following requirements to the satisfaction of the ADR Committee:
  - a. both trainers are to have:
    - (i) a theoretical and practical background in negotiation and or mediation; and
    - (ii) practical experience as a mediator;
  - b. one of the two trainers is to have previous experience in training mediators.
2. Comprise at least 24 contact hours.
3. Include a theoretical background to mediation and negotiation.
4. Include practical training sessions meeting the following requirements:
  - a. each participant is involved in a least two simulations or equivalent as the mediator; and
  - b. on at least one occasion each participant acting as a sole mediator will be observed by a tutor or coach with mediation experience who is able to debrief on an individual and or group basis with the participant.

<sup>2</sup> The courses must:

1. Be conducted by at least two trainers who meet the following requirements to the satisfaction of the ADR Committee:
  - a. both trainers are to have:
    - (i) a theoretical and practical background in negotiation and or mediation; and
    - (ii) practical experience as a mediator;
  - b. one of the two trainers is to have previous experience in training mediators.
2. Include theoretical material related to a review of mediation processes or advanced processes and techniques for mediation, negotiation or other alternate dispute resolution process.

<sup>3</sup> For example, social sciences such as psychology and social work.

<sup>4</sup> For example, mediate disputes involving medical issues.

- (b) Experience in mediation which satisfies the requirements in rule 1.4 below;
- (c) Good repute in manner, demeanour and presence;
- (d) Compliance with ethical standards of practice as required by the Bar Association of Queensland; and
- (e) Acceptable degree of competence as a mediator (to the extent that information is available to the ADR Committee regarding the applicant's ability).

An applicant for accreditation as an *accredited mediator* shall provide the ADR Committee with such independent verification of each of these criteria as the ADR Committee may reasonably require.<sup>5</sup>

#### **1.4 Experience Criteria**

The level of experience required for every *accredited mediator* is the achievement of ten points (10) during the course of the applicant's practice as a legal practitioner. For this purpose:

- (a) having acted as a mediator or co-mediator constitutes two (2) points for each mediation;
- (b) having represented a party at a mediation constitutes one (1) point per mediation regardless of the length of the mediation;
- (c) having been present at a mediation as an observer with the mediator constitutes one (1) point per mediation regardless of the length of the mediation; and
- (d) having presented a topic or discussion at a Queensland Bar or other appropriately significant forum on ADR practice and/or theory constitutes two (2) points.

No more than forty per cent of points can be obtained from the categories specified in sub-rules 1.4 (b), (c) and (d).

## **2 RE-ACCREDITATION**

From 1 July 2007, a Queensland barrister who seeks re-accreditation as an *accredited mediator* will need to meet the following requirements.

### **2.1 Re-accreditation of *accredited mediators***

An *accredited mediator* seeking re-accreditation as an *accredited mediator* will need to meet the requirements set out in sub-rules 1.3 (c), (d) and (e) above at the time of application for re-accreditation and have accumulated the points set out in rule 1.4 within the two years prior to application for re-accreditation.

### **2.2 Verification of applications for re-accreditation**

An applicant for re-accreditation as an *accredited mediator* provide the ADR Committee with such verification of fulfillment of the relevant criteria as the ADR Committee may reasonably require.<sup>6</sup>

### **2.3 Re-accreditation Every Two (2) Years**

From 1 July 2007 the accreditation of each *accredited mediator* will be valid until 30 June in the second calendar year following that in which he or she was first accredited or most recently re-accredited, as the case may be. It is an express object of these rules that accreditation of *accredited mediators* must be renewed every two years.

### **2.4 Lapsing of Accreditation**

If an *accredited mediator* has not applied for re-accreditation by the 30 June date until which his or her accreditation is valid, his or her recognition as an *accredited mediator* will automatically lapse and his or her name will be removed from the list of *accredited mediators* of the Queensland Bar.

### **2.5 Transitional**

Notwithstanding rule 2.3, all barristers who are:

- (a) accredited as mediators by the Bar Association of Queensland, or
- (b) approved as mediators of a Court in Queensland,

on 30 June 2007 will be automatically accredited as *accredited mediators* under these Rules but only until 30 June 2008, by which time they must have applied for accreditation or their accreditation under this clause shall lapse. The accreditation of barristers who have the benefit of this sub-rule and who do apply for and receive accreditation by 30 June 2008 shall remain valid until 30 June 2009.

<sup>5</sup> For example, the ADR Committee may require the applicant to provide a reference by another legal practitioner of not less than five (5) years standing certifying as to the applicant's compliance with the criteria and the factual basis for the certification.

<sup>6</sup> For example, the ADR Committee may require the applicant to provide a reference by another legal practitioner of not less than five (5) years standing certifying as to the applicant's compliance with the criteria and the factual basis for the certification and/or provide a statutory declaration of compliance by the applicant.

### **3. GENERAL**

#### **3.1 ADR Committee**

The Council of the Bar Association of Queensland shall appoint the ADR Committee, which shall:

- (a) be responsible for the implementation of these rules,
- (b) be responsible for the accreditation and re-accreditation under these rules,
- (c) make the decisions and exercise the discretions conferred on it under these rules, and
- (d) otherwise perform the functions required of it under these rules.

#### **3.2 Formal Requirements**

The ADR Committee may:

- (a) prescribe requirements for the forms of applications for accreditation and re-accreditation, including the necessity for the applicant's qualifications to be included and any other material as the Committee considers relevant;
- (b) determine dates by which applications for accreditation or re-accreditation must be received prior to 30 June in any calendar year to enable such forms to be processed and considered;
- (c) otherwise impose such administrative requirements for accreditation and re-accreditation as it considers reasonably appropriate.

#### **3.3 Application Forms**

Application forms can be obtained from the Bar Association of Queensland website or from the Bar Association of Queensland, Level 5 Inns of Court, 107 North Quay, Brisbane.

#### **3.4 Current Practising Certificates**

Every *accredited mediator* must hold a current Practising Certificate issued by the Bar Association of Queensland at all times during the currency of his or her accreditation under these rules.

If a barrister's Practising Certificate is cancelled or revoked, then any accreditation which that barrister holds under these rules shall automatically be cancelled or revoked.

If a barrister's Practising Certificate is suspended, then any accreditation which that barrister holds under these rules shall be suspended for a coterminous period.

#### **3.5 Dispensation**

If an applicant provides to the ADR Committee evidence which, in the opinion of the ADR Committee, demonstrates that the applicant has relevant and sufficient experience in the practice or teaching of mediation, the ADR Committee may exempt that applicant from compliance with any of the criteria for accreditation as an *accredited mediator* PROVIDED THAT under no circumstances may the ADR Committee exempt an applicant from the requirement that he or she holds a current Practising Certificate from the Bar Association of Queensland.

#### **3.6 Observation of Mediations**

Each *accredited mediator* will use his or her best endeavours to assist in the training of mediators, including by allowing barristers to attend as observers at mediations. This requirement is always subject to the consent of the parties to each mediation.