



# Code of Ethics and Conduct for Members

By joining Mediation Institute as Professional Mediator (NMAS), Family Dispute Resolution Practitioner (FDRP) or Mediation Student you confirm that you comply with the following Code of Ethics and Conduct.

## **Professional Conduct**

1. To behave in a way that demonstrates good character. Good character is defined as being honest, demonstrating integrity and a respect for the law in your professional and private life. This includes but is not limited to:
  - a) Maintaining confidentiality as agreed with clients and not using information obtained in mediation for personal gain or advantage.
  - b) Refraining from threats or the use of violence in your personal and professional life.
  - c) Upholding your duty of care to protect people from exposure to violence or threats of violence to the extent that it is possible without jeopardising your own personal safety.
  
2. To disclose to Mediation Institute at the time of application for membership, or if the issue arises during the term of your membership as soon as practical, any of the following:
  - a) any criminal convictions.<sup>1</sup>
  - b) if you have been disqualified from any type of professional practice.<sup>2</sup>
  - c) if you have ever been refused NMAS accreditation or accreditation renewal or had your accreditation suspended or cancelled.
  - d) any impairment that could influence your capacity to discharge your obligations in a competent, honest and professional manner.
  
3. To be aware of and comply with:
  - a) the NMAS Approval Standards and Practice Standards,
  - b) the Family Law (Family Dispute Resolution Practitioners) Regulation 2008 (if a FDRP),
  - c) any other professional standards and any other requirements relevant to you.

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<sup>1</sup> A criminal conviction does not automatically mean that you are ineligible for membership or accreditation however convictions for crimes related to violence, sexual abuse, child abuse or dishonesty may.

<sup>2</sup> A disqualification from professional practice does not automatically mean that you are ineligible for membership. A failure to disclose would indicate a lack of integrity and would significantly increase the likelihood that you would not be accepted for membership.

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4. To be honest in terms of marketing your services as a mediator including:
  - a) Accurately representing your qualifications and experience as a mediator.
  - b) Providing accurate information about your practices and procedures so that potential clients can make an informed decision about participating in mediation.
  - c) Not promising that an agreement or any specific outcome can be achieved from the mediation process or implying that promise.
  - d) Being clear about the basis on which all fees, costs and additional charges will be levied clear, including any hourly rate, before the mediation process commences.
  - e) To clearly indicate your role when acting in the capacity of mediator, especially if you have additional professional roles such as a lawyer, advisor or other role.
  - f) If a FDR Practitioner to comply with Regulation 28 in providing the [Information to be given to parties before Family Dispute Resolution](#)
5. To keep private and confidential information private by:
  - a) Storing and disposing of any records from mediation / family dispute resolution securely
  - b) Refraining from providing information or evidence about anything that occurs in mediation and/or FDR without the permission of the party or parties who disclosed the information
6. To disclose private and confidential information if:
  - a) the practitioner reasonably believes that it is necessary to prevent or report an imminent threat of harm to a person or property or a crime related to harm to a person or property or
  - b) required or permitted by law to release private and confidential information
7. To avoid bias and conflict of interest and the perception of bias or conflict of interest by:
  - a) Withdrawing from any case where you do not believe that you can facilitate the process fairly.
  - b) By informing the participants of any situation where there may reasonably be grounds for a perception of bias or conflict of interest, even if you do not feel that you will be biased or conflicted
  - c) Potential grounds for conflict of interest include:
    - i. previously acting in a professional capacity (other than as a mediator, FDRP, family counsellor or arbitrator)

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- ii. previous commercial dealings
    - iii. a personal acquaintance
  - d) Dispute resolution services should only be provided if there is a potential conflict of interest if:
    - i. Each party to the dispute resolution process agrees and
    - ii. The previous professional dealings (if any) do not relate to the issues in dispute or
    - iii. The previous commercial dealings (if any) are not of a kind that could reasonably be expected to influence you in the provision of mediation services
  - e) Refraining from acting in an advocate or other professional role for one party only after mediation and/or family dispute resolution, without the permission of all parties to do so. This permission should be documented in writing.
8. To ensure that your professional insurances remain current at all times.

## **Conduct when Mediating**

9. To mediate only when you have competence to do so and to seek support, a co-mediator or mentor when you are unsure of your competence in a specific situation or scenario.
10. To prepare appropriately for mediation and only conduct mediation in a location where the participants privacy and confidentiality can be protected (to their level of comfort).
11. To ensure that a pre-mediation assessment has been conducted in any dispute and that mediation is appropriate. If any party in the dispute is not able to negotiate freely due to an imbalance of power or threats mediation may not be an appropriate process.
12. In deciding if mediation is appropriate the mediator / FDRP must take into account:
- a) Any history of violence / family violence (if any) among the parties
  - b) The likely safety of the parties
  - c) The equality of bargaining power among the parties
  - d) The risk that a child may be abused
  - e) The emotional, psychological and physical health of the parties
  - f) Any other matter that the mediator / FDRP considers relevant to the mediation process

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13. To uphold the integrity and fairness of the mediation process by:
  - a) Facilitating mediation in a way that is fair, unbiased and without any personal gain from any specific outcome.
  - b) Avoiding conflict of interest.
14. To use an Agreement to Mediate or other document to provide the client with clear and accurate information about your processes, costs, roles and how a participant can make a complaint if they do not believe that the process was facilitated in accordance to their expectations.
15. To not use any information gained during the mediation process or to act as an advocate or in any other professional capacity in relation to the same subject without the express permission in writing from both parties.
16. To uphold self-determination and communicate with all participants in a fair, respectful and sensitive manner.
17. To facilitate the mediation process professionally supporting participants to engage in the process without demonstrating bias.
18. To suspend or terminate the mediation process if it becomes evident to you that it is no longer appropriate or that it could be detrimental to one or more of the participants or yourself.
19. To only provide legal advice and/or expert information when you have the expertise and qualifications to do so and then only when:
  - a) It supports the decision-making of the participants.
  - b) When it is agreed by all participants in advance that advice and/or expert information may be provided e.g. in your Agreement to Mediate.

## **Professional Development**

20. To comply with the professional development standards required in the NMAS and/or Regulations by participating in a minimum of 24 hours of education, training or professional development in mediation and/or family dispute resolution in each 24-month period starting from your accreditation date.
21. To support the dispute resolution industry by upholding standards, supporting new entrants and advocating alternative dispute resolution as an alternative to adversarial processes where appropriate.
22. To cooperate in establishing and maintaining the quality, qualifications and standards of dispute resolution practice.

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23. To actively engage with any feedback, supervision or complaints made about or to you as a mediator while protecting confidential client information.

## Further Information

Mediation Institutes Code of Ethics is aligned with the [NMA Mediator Accreditation and Practice Standards](#) for Mediators accredited under the NMA and the [Family Law \(Family Dispute Resolution Practitioners\) Regulations 2008](#).

In addition, members should familiarise yourself with the Mediation Institute External Complaint Handling Service which applies to any complaints about members that can not be dealt with internally by your systems.

[Mi RMAB Complaint Management Process Fact Sheets](#)

[Mi RMAB Complaints Management Service](#)