



Mediation Institute
Complaint
Management Service

FEBRUARY | 2019

© Mediation Institute Pty Ltd

Suite 140, 7/225
Lonsdale Street,
Dandeong Vic 3175

Phone 1300 781 533
Office@mediationinstitute.edu.au
www.mediationinstitute.edu.au

CONTENTS

1. AN OVERVIEW OF OUR COMPLAINT MANAGEMENT SYSTEM	3
1.1 WHAT IS THE MI INDEPENDENT COMPLAINTS MANAGEMENT SERVICE? WHAT IS THE SYSTEM?.....	3
1.2 WHAT SITUATIONS DOES THE COMPLAINTS HANDLING SERVICE APPLY TO?.....	4
1.3 WHAT IS THE CONTEXT FOR THIS SERVICE?	5
1.4 WHAT IS THE ROLE OF THE MI INDEPENDENT COMPLAINTS HANDLING SERVICE?	5
2. HOW COMPLAINTS ARE HANDLED	6
3.1 THE OBJECTIVES OF OUR COMPLAINT HANDLING STRATEGY.....	7
3.2 COMMUNICATION WITH THE ATTORNEY GENERALS DEPARTMENT	8
4. REVIEW STRATEGY	9
5. REGULATORY AND POLICY FRAMEWORK.....	9
6. STAFF ROLES AND RESPONSIBILITIES	10
ATTACHMENT 1: MI COMPLAINT PROCESS	11
ATTACHMENT 2: COMPLAINT FORM	12
ATTACHMENT 3 – INFORMATION COLLECTION TEMPLATE	13
ATTACHMENT 4 – HARM ASSESSMENT TABLE	14
ATTACHMENT 5 – HARM MATRIX AND APPROPRIATE RESPONSE	15
ATTACHMENT 6: MEDIATION INSTITUTE CODE OF ETHICS.....	16

1. AN OVERVIEW OF OUR COMPLAINT MANAGEMENT SYSTEM

1.1 What is the Mi Independent Complaints Management Service? What is the System?

The Mediation Institute Independent Complaints Management Service is a service provided to Mediation Institute members in order to provide an independent third party to refer complaints to.

The service meets the mandatory requirement of an Independent complaint management system for:

- NMAS Accredited Mediators
- Family Dispute Resolution Practitioners
- Family Group Conference Facilitators
- Registered Training Organisations

The system describes how complaints are accepted, handled and resolved. The intention is to resolve disputes and identify opportunities to improve practice.

As a Recognised Mediator Accreditation Body () we have an obligation to consider, when a complaint is substantiated, whether the members National Mediator Accreditation System (NMAS) Accreditation should be cancelled or suspended.

In the case of a Family Dispute Resolution (FDR) Practitioner, where their conduct is in breach of their obligations and standards we may be required to provide this information to the Attorney Generals Department.

The service provides a structured approach to complaint handling organised around three practical Objectives:

1. Identify and manage complaints early, in order to resolve them effectively and efficiently
2. Provide professional, independent investigation and dispute resolution services appropriate to the issues raised and in a way that is considered by all parties to be fair and proportionate to the complaint
3. Record and use information about complaints in an appropriate and meaningful way

More detail about these Objectives can be found in [section 3](#) of this document.

By following the system all stakeholders can be assured of an appropriate response to complaints about mediators and family dispute resolution practitioners who are eligible for the Mediation Institute Independent Complaints Handling Service.

Please Note: As a service to the industry, Mediation Institute will accept complaints about any person holding themselves out to be a mediator or RTO. We will accept the complaint and attempt to resolve the issue if no other Independent complaint handling service is identified or able to assist the complainant.

1.2 What situations does the Complaints Handling Service apply to?

The Mediation Institute Independent Complaints Management Service is available for Mediation Institute Members and student members.

- Practitioner Members: FDR Practitioners, NMAS Accredited mediators, Family Group Conference Facilitators
- Student members are students of a Mediation Institute course
- Registered Training Organisation Members

In some situations, our members are members of more than one membership association that provides Independent Complaint Handling for members and others are covered by their employer.

Coverage is determined on a case by case basis should a complaint be made with Mediation Institute available to hear the complaint should we be required to do so.

The Mi Complaints Handling Service provides complaint management services in a wide range of situations including:

- Complaints by clients of the member
- Complaints by staff or contractors of the member
- Complaints by others about concerns with the members' professional practice or public profile
- Enquiries by members about ethical issues or concerns to help avoid complaints

Our service also provides information about complaint trends (de-identified) and about cancelled NMAS Accreditations to the regulators.

More detail on the circumstances when cancellations may apply in [section 2](#) below.

A core standard underpinning this service is **proportionality**. The time and resources devoted to complaints handling should be proportionate to the circumstances.

In the first instance we speak with the parties to determine the situation and the complaint may be resolved at this stage for no cost.

If further resources are required there may be a cost payable by the member.

Generally, fees are not required to be paid by claimants to avoid cost being a barrier to making a legitimate complaint about the conduct of a member.

1.3 What is the context for this service?

The Mediation Institute Independent Complaint Management Service is provided in the context of the requirement for such a service in the National Mediator Accreditation System (NMAS) for NMAS Accredited Mediators and the ASQA Standards for Registered Training Organisations.

Mediators

If the member is also an accredited Family Dispute Resolution Practitioner, the context extends to their role as a FDR Practitioner.

FDR Practitioners

Investigations into complaints about FDR Practitioners are informed by the Attorney Generals Department Fact Sheets and Family Law (Family Dispute Resolution Practitioners) Regulations 2008.

RTO Members

Investigations into complaints about Registered Training Organisations are informed by the Australian Skills Quality Authority (ASQA) Standards.

Mediation Institute Members

Mediation Institute also has a statement of Ethical Standards which provide context for complaints about dispute resolution practitioner members. Please ensure you are familiar with the standards that apply to your role.

See Appendix for a copy of the Mediation Institute standards.

1.4 What is the role of the Mi Independent Complaints Handling Service?

Our role is to provide clients of members with an independent, third party to escalate disputes and complaints about services provided to.

It is also intended to help maintain industry standards by providing a way for concerns about the conduct of a dispute resolution professional, dispute resolution organisation or registered training organisation to be raised.

It supports the process to cancel NMAS accreditation where serious breaches of standards have occurred.

2. HOW COMPLAINTS ARE HANDLED

This service is designed to assist in resolving complaints made about professional services provided by dispute resolution practitioners and registered training organisations.

Complaints are reviewed and any misunderstandings and misaligned expectations that do not relate to misconduct may be able to be resolved during the first contact with Mediation Institute.

The complainant may be able to remain anonymous if requesting general information about standards for Dispute Resolution Professionals or Registered Training Organisations.

In most situations' complainants will be required to provide their contact details and the contact details of the member in question for the complaint to proceed.

If further investigation is required information about the member, the complainant and a general outline of the complaint will be collected.

This can be done by phone, email or letter. Complainants are not required to complete a specific form to make a complaint.

Complaint Forms

A Complaint Form is completed internally by Mediation Institute staff to initiate a complaint.

The Complaint Form is used to move client information through the system. If a Complaint Manager is allocated the form will go to them to document progress of their investigation of the complaint.

A conflict of interest check is completed with the Complaint Manager to ensure that there is no conflict of interest e.g. a close collegiate relationship with the subject of the complaint or a personal relationship with the complainant before full details of the complaint is provided to them.

A conflict of interest would be any situation where the Complaint Manger feels that they could not fulfil the role without bias, or a reasonable person might consider there to be a conflict of interest.

The Complaint Manager may make use of a variety of methods to develop an understanding of the issues and resolve them.

If the issue is deemed to be high risk the Complaint Manager will discuss the issues with Mi management before a decision regarding any disciplinary or other response.

A record of all complaints about a member will be retained in electronic format for a minimum of ten (10) years.

3.1 The objectives of our Complaint Handling Strategy

The overarching purpose of this strategy is to ensure we adopt a coordinated, consistent and effective approach to managing complaints about members and proactively assist in preventing complaint clusters through information provided to members.

The approach we take will be most useful when it is proportionate (in terms of time, effort and cost) to the issues raised in the complaint or dispute.

Objective 1: Identify and manage complaints quickly

Mi aims to capture basic details and determine the most appropriate approach to handling a complaint quickly and efficiently.

The target is for all complaints to be resolved or allocated a Complaint Manager within seven (7) days of the first contact by the complainant.

Measurement:

- a record is kept of the time between notification of the complaint and resolution and notification of the complaint, allocation of a Complaint Manager and resolution of the complaint.

Objective 2: Fair and proportionate

Mediation Institute Independent Complaints Management Service offers a professional, independent investigation and dispute resolution service appropriate to the issues raised that is considered by all parties to be fair and proportionate to the complaint.

The target is that complainants and members surveyed about their experience of the complaint handling service indicate that they are satisfied or very satisfied.

Measurement:

- 80% or more of users of the service say that they are satisfied or very satisfied.
- That all responses from users of the service saying they are unsatisfied or very unsatisfied are reviewed for improvement opportunities or the need to re-open complaints.

Objective 3: Appropriate use of information about complaints

Mediation Institute Independent Complaints Management Service makes appropriate use of information from complaints and the outcome of investigations into complaints.

The target is that a record of all documented complaints is kept, and information distributed to stakeholders in an appropriate way.

Measurement:

- Data is collected to identify the types of complaints and outcomes. This information is de-natured and periodically shared with members for educational purposes
- Complaint information (de-natured) is used in training for members and Complaint Managers on ethical conduct and best practice
- Cancellations of NMAS Accreditation are processed according to requirements with identifying information about the mediator involved provided only to those organisations with a legitimate right to that information. The organisations include MSB, others (upon request) and the Attorney Generals Department.

3.2 Communication with the Attorney Generals Department

Maintaining NMAS Accreditation and appropriate professional conduct are matters of interest to not only the Mediators Standards Board but also the Australian Attorney Generals Department.

Mediation Institute will inform the Australian Attorney Generals Department of any NMAS Accreditation cancellation, suspension or lapse for any member who has indicated that they are a Family Dispute Resolution Practitioner.

Information provided is the name of the FDRP, the reason that they are no longer a NMAS Accredited mediator (lapse, suspend, cancelled) and the effective date. Further information about Cancellations of NMAS Accreditation will be provided upon request.

Mediation Institute Members provide permission to share this information during application for membership.

The following information is included in all Mi application forms.

I am also applying for accreditation as a Family Dispute Resolution Practitioner or am a currently accredited FDRP. I authorise Mi to provide notice to the Attorney Generals Department in accordance with the Mi Disciplinary policy or if my NMAS accreditation lapses, is suspended or is cancelled. You will be advised by the last known contact method before any notification to the Attorney Generals Department is notified of the outcome of any disciplinary process or if your NMAS lapses.

4. REVIEW STRATEGY

The Mi Independent Complaints Handling service is reviewed against the Self Audit Checklist annually unless any major changes occur to the underlying practice standards or legislation.

Any major changes will trigger a full review of the service and associated documents, forms and websites.

5. REGULATORY AND POLICY FRAMEWORK

This Plan has been formulated to help us resolve disputes in a cohesive manner in compliance with the following regulatory and policy requirements:

NMAS Accredited Mediators

- NMAS Accreditation Standards www.msb.org.au

Family Dispute Resolution Practitioners

- Family Law (Family Dispute Resolution Practitioners) Regulations 2008, <https://www.legislation.gov.au/Details/F2009C00158>
- Family Law Act 1975 <https://www.legislation.gov.au/Details/C2016C01106>
- Family Law Rules 2004 <https://www.legislation.gov.au/Details/F2017C00029>
- Attorney Generals Department Fact Sheets, <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Pages/Foraccreditedfamilydisputeresolutionpractitioners.aspx>

Fact Sheets

- o [FDR Practitioner Obligations—to clients \[PDF 127KB\]](#)
- o [FDR Practitioner Obligations—accreditation \[PDF 177KB\]](#)
- o [Suspension and Cancellation of accreditation \[PDF 191KB\]](#)
- o [Frequently asked questions by FDR practitioners \[PDF 192KB\]](#)
- o [Screening and Assessment \[PDF 251KB\]](#)
- o [Screening and Assessment Framework \[PDF 2MB\]](#)
- o [Exceptions to Family Dispute Resolution \[PDF 212KB\]](#)
- o [Fact sheet on s60I certificates \[PDF 210KB\]](#)
- o [FDR Register \[PDF 215KB\]](#)

Registered Training Organisations

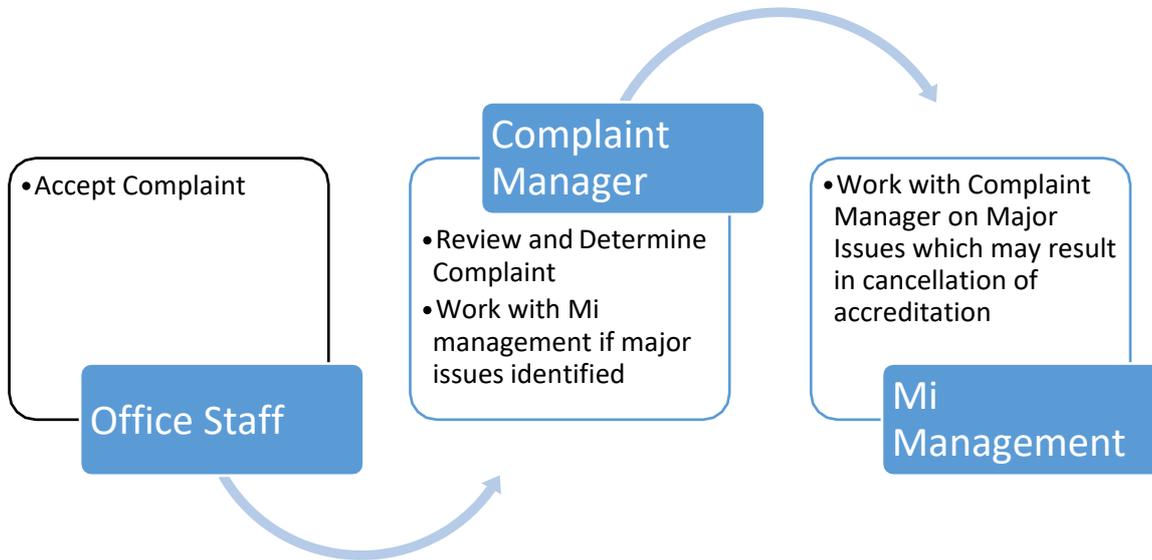
- Australian Skills Quality Authority (ASQA) <https://www.asqa.gov.au/about>

6. STAFF ROLES AND RESPONSIBILITIES

Staff Member / Others	Responsibilities	Resolution
Office staff	<ul style="list-style-type: none"> • Receive complaint enquiry verbally, via email or letter • Review and document the complaint. • Contact the complainant if more information is needed. Information needed includes the name of the mediator / FDRP the complaint is about, the basis for the complaint and the name and contact details for the complainant • Provide basic information about the complaints process and what to expect Fact Sheet – How to complain about a Mi Member • Escalate to a complaint manager (check for conflict of interest before providing detailed information) • File completed complaint forms confidentially • Update complaints statistics 	<ol style="list-style-type: none"> 1. Complainant does not wish to proceed 2. Complainant will not provide identifying information 3. Complainant is satisfied with basis information provided 4. Escalate to a Complaint Manager
Complaint Manager	<ul style="list-style-type: none"> • Review the information provided about the complaint • Contact the complainant to explain role and for more information • Contact the member to discuss the complaint • Review issues raised against standards or regulations if necessary • Determine most appropriate response* • Discuss complaint with Mi management (if issues warrant joint decision making) • Communicate response to complainant and member • Send feedback form to mediator and complainant • Provide completed Complaint Form to Mi Management 	<ol style="list-style-type: none"> 1. No breach of duty – explained and case closed 2. Minor breach of duty – resolution discussed and complainant satisfied 3. Major issues – disciplinary action required
Mediation Institute Management	<ul style="list-style-type: none"> • Review completed Complaint Forms • Discuss major issues with Complaint Manager • Update NMAS Register (if accreditation cancelled) • Contact AG's department (if accreditation cancelled) 	<ul style="list-style-type: none"> • Review major issues • Update registers and regulators

*see Mi Complaints Management Process Fact Sheets

Attachment 1 – Mi Complaint Process



Attachment 2 – Complaint Form

Mi Complaint Form		
Office Staff member	Date	
	Name	
Complainant	Name	
	Address	
	Phone Number	
	Email	
Complaint	Issue Code or codes ¹	
	Notes on issue	
	Issue Consequence ²	
	Notes on consequence	
	Is the issue substantiated? ²	
	Notes on likelihood	
	Escalate?	
Complaint Manager	Date allocated	
	Name	
	Phone Number	
	Email Address	
Investigation	Harm rating ²	
	Appropriate response	
	Response action taken	
	Additional parties involved?	
Resolution / Decision	Managed / Resolved Date	
	Process used	
	Decision	
	Additional actions required (list)	
Notification of Decision	Complainant – date and response	
	Member – date and response	
	Other – who and what	
Decision Appealed?	Details	
Time and Cost	Length of matter (days open)	
	Cost to Mi	
Office	Data collated	
	Date Filed	

¹ Attachment 3 – Mi Independent Complaints Handling System

² Resource Sheet 1 – Mi Complaints Management Process Fact Sheets

ATTACHMENT 3 – INFORMATION COLLECTION TEMPLATE

ISSUES CODES LIST

Issue Code		Description
1	Access to services	Including failure to keep an agreed appointment, unavailability of services, transit issues or unreasonable wait times, restricting access to information
2	Communication and discrimination	Including discrimination, failure to treat with respect, poor communication and attitude (bullying, rude, negative or patronising attitudes), inadequate information (including incomplete and incomprehensible information), misleading or incorrect information, or failure to provide interpretive or special needs support
3	Facilities	Including administrative processes, car parking, cleaning, catering, conditions, noise, lack of privacy, security
4	Cost	Including billing practices, insufficient or incorrect information, overcharging, failure to disclose, hidden costs
5	Grievance	Including inadequate responses to complaints and disputes, action against consumers or staff, or lodging complaints or disputes
6	Privacy and confidentiality	Including a failure to ensure personal privacy or confidentiality, allowing access to confidential record, inappropriate disclosure or failure to comply with reporting / duty of care obligations
7	Professional conduct	Such as failure to comply with practice standards (NMA Part III – Practice Standards), bogus claims, sexual misconduct, incompetence, aggressive or violent actions, undisclosed conflicts of interest, failure to disclose required information (in application and re-accreditation processes), unethical conduct (misuse of information disclosed in mediation, abuse of process, inappropriate breaches of confidentiality)
8	Other	Does not fall in any of the other categories (must be detailed)

ATTACHMENT 4 – Harm Assessment table

ASSESSING HARM TABLES

Consequence descriptor	
Insignificant	No damage to complainant, no financial loss, no breach of obligations by the practitioner
Minor	No financial loss, minimal harm of any type, very minor infraction (if at all) of practitioner obligations
Moderate	Small financial loss or distress or other harm (minimal) or non-conformance with professional obligations
Serious	Significant breach of obligations with some consequential or potential harm to complainant or other
Major	Major breach of obligations and consequential harm to complainant or other. Potential to bring mediation / FDR into disrepute

Substantiation descriptor	
Yes	The issue is agreed to have occurred by both the complainant and the member
Likely	The issue is disputed but probably occurred based on the evidence provided
Unlikely	The issue may have occurred but is unlikely based on the evidence provided
No	The issue did not occur based on the evidence provided

ATTACHMENT 5 – Harm Matrix and appropriate response

HARM MATRIX

Did it occur?		CONSEQUENCES				
		INSIGNIFICANT	MINOR	MODERATE	SERIOUS	MAJOR
		1	2		3	4
Yes	A					
Likely	B					
Unlikely	C					
No	D					

RESPONSE MATRIX

Major Issue	Involvement of Mi management required
Serious Issue	Mi management attention needed
Minor Issue	Document for educational purposes, discuss improvements with practitioner
No substantiated issue	Practitioner to review internal processes. How could the complaint have been avoided?

Attachment 6 – Mediation Institute Code of Ethics

Mediation Institutes Code of Ethics is aligned with the [NMAS Mediator Accreditation and Practice Standards](#) for Mediators accredited under the NMAS.

By joining Mediation Institute as an Advanced Mediator, Professional Mediator (NMAS) 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 convictions³
 - b) if you have been disqualified from any type of professional practice⁴
 - 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) any relevant legislation
 - c) any other professional standards and
 - d) any other requirements relevant to you
4. To be honest in terms of marketing your services as a mediator including:
 - a) Accurately representing your qualifications and experience
 - b) Providing accurate information about your practices and procedures so that potential clients are able to make an informed decision about participating in mediation

³ 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.

⁴ 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.

- c) To avoid promising that an agreement or any specific outcome can be achieved from the mediation process or implying that promise
 - d) To make the basis on which all fees, costs and additional charges will be levied clear and 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
5. 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 in accordance with the Practice Standards.
6. To ensure that your professional insurances remain current at all times.

Conduct when Mediating

7. 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.
8. 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.)
9. To uphold the integrity and fairness of the mediation process by:
- a) Conducting a pre-mediation assessment of the dispute and suitability for mediation in accordance with the Practice Standards and any other standards that apply to your specific practice
 - b) Facilitating mediation in a way that is fair, unbiased and without any personal gain from any specific outcome.
 - c) Avoiding conflict of interest
10. 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.
11. 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.
12. To uphold self-determination and communicate with all participants in a fair, respectful and sensitive manner
13. To facilitate the mediation process professionally supporting participants to engage in the process without demonstrating bias.

14. 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.
15. To only provide 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

16. To comply with the professional development standards required in the NMAS
17. 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.
18. To cooperate in establishing and maintaining the quality, qualifications and standards of DR practice
19. To actively engage with any feedback, supervision or complaints made about or to you as a mediator while protecting confidential client information.

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

[Mediation Institute Independent Complaint Management Process Fact Sheets](#)