

Checklist – FDRP Ethical Practice

When we are marketing and conducting our professional practices, we have some considerations to make in terms of what we are ethically able to do and what we are prohibited from doing.

Do you / have you?	Yes, No, ?
Conflict of Interest – Have you checked that you haven’t ... previously acted in a professional capacity? ... had previous commercial dealings? ... have a previous personal acquaintance? Do you have a disclosure process if proceeding?	
Inappropriate fee structures – Do your fees and charges apply regardless of outcome? Do you avoid contingent fee structures where you get a bonus or other benefit for a “successful” outcome?	
Referral fees / exchanges - Do you refuse to offer or receive referral fees in any form? Do you avoid referring clients to individual providers e.g., in a referral exchange program or in circumstance where the referral is not based on the client’s needs? ¹	
Client confidentiality – Do you have strong processes in place to protect client confidentiality? Do you store confidential information securely?	
Qualifications – Do you accurately identify your qualifications to be a FDRP in your marketing? Do you clarify and work within the scope of your role if you also have other professional roles e.g. as a lawyer?	
Costs - Do you provide clear information about the cost of your services in advance including any additional costs for disbursements like room hire, travel or over time sessions?	
Guarantees - Do you make it clear that you cannot guarantee that the parties will reach agreement in FDR?	
Informed Consent – Do you support clients getting legal and other advice needed to make informed decision about engaging in FDR and in committing to agreements?	
Do you provide legal information and avoid providing legal advice if you are not a lawyer? <i>If you are a lawyer</i> Do only provide legal advice that <u>will not</u> bias the process or create a conflict of interest?	
Terms and Conditions - Do you use an Agreement to Mediate or similar document explaining the terms and conditions under which your FDR Services are offered?	
Honest – Are you honest in your marketing and advertising e.g. not claiming experience you don’t have?	
Misleading - Do you avoid misleading claims in your marketing?	
Obligations – Do you comply with the FDR Regs when issuing s60i’s? Do you know what the obligations are?	
Compulsory Information – Do you provide the Reg. 28 information prior to commencing FDR in a way that is accessible and understandable by clients?	
Professionalism - Do you avoid knocking copy and extend professional courtesy to other professionals in your communications?	
Complaint Handling - Do you always maintain a suitable complaints mechanism and inform clients how to make a complaint about your services?	
Maintaining Registration – Do you maintain your registration by complying with obligations regarding insurance, updating AG’s department quickly when your information changes, professional development etc. according to the Regs?	
Other obligations – Do you have any other professional obligations that you need to comply with e.g. as a lawyer or psychologist?	

¹This is an area of ambiguity. Referring to individuals is discouraged in the NMAS Practice Standard 8.5 but has been confirmed as appropriate by the AG’s Practitioner Registration Unit in response to client needs.

Review of your answers

Were there any question marks or “no’s”? If you answered no or don’t know you will need to check your procedures and processes.

Failing to do any of these things could result in an upheld complaint against you or a claim against your professional indemnity insurance. If severe it could result in the loss of your accreditation as a FDRP.

Resources

Australian Consumer Law

www.consumerlaw.gov.au

Regulated by the Australian Competition and Consumer Commission (ACCC) and state or territory consumer protection agencies. <https://www.accc.gov.au/>

Family Law (Family Dispute Resolution Practitioners) Regulations 2008

<https://www.legislation.gov.au/Details/F2009C00158>

Complaints are dealt with by the FDRP’s complaint handling body e.g. Mediation Institute

<https://www.mediationinstitute.edu.au/complaint-handling-service/>

If a complaint is made and upheld the Australian Attorney Generals Department will be informed and your registration may be cancelled depending on the seriousness of the infraction.

<https://www.ag.gov.au/families-and-marriage/families/family-dispute-resolution/information-family-dispute-resolution-practitioners>

National Mediator Accreditation System (NMAS)

www.msb.org.au

Regulated by the Recognised Mediator Accreditation Bodies (RMAB’s) e.g. Mediation Institute who provide the complaint handling services for the NMAS Mediator. If a complaint is upheld, depending on the issue, your accreditation could be cancelled.

Professional Indemnity Insurance

Read your policy to see what you are and are not covered for.

Professional Association

Membership is low cost and members can call and speak with a member of our team to discuss ethical dilemmas and concerns. <https://www.mediationinstitute.edu.au/membership/>

Mi Mediators Network

A free network for dispute resolution professionals <https://network.mediationinstitute.edu.au>

To Do List

What	Details	Done Date