

Appendix 4

DOMAINS: PROFESSIONAL SKILLS, ETHICS AND RESPONSIBILITIES

GUIDELINES

Background to these guidelines

1. Part 5 of the AMDRAS Standards ('Standards') describes the 4 Professional Practice Domains (ie, Professional Knowledge, Professional Skills, Professional Ethics and Responsibilities, and Professional Development).
2. The Standards authorise the AMDRAS Board to issue guidelines. The guidelines in this Appendix 4 relate to the Professional Attributes outlined in clauses 62.2 and 62.3 of the Standards, namely, Professional Skills, and Professional Ethics and Responsibilities.
3. These guidelines are not meant to be exhaustive or definitive. However, Registered Practitioners must adhere to them as far as reasonably practicable. Registered Training Providers and trainers also must take account of them when providing training under the Standards.
4. The Board may amend, add to, delete, or replace any or all of these guidelines.
5. Under clause 85 of the Standards:
 - a) guidelines are binding and must be followed (unless they state otherwise).
 - b) guidelines are to be interpreted so far as possible as being consistent with Parts 1–8 of the Standards; and
 - c) there is no inconsistency merely because a provision in the guidelines is more detailed than the relevant provision in the Standards.
6. Terms defined in the AMDRAS Standards have the same meanings in this Appendix.

Professional Skills Domain

7. Table 1 below specifies the Indicative Levels of Professional Practice for each element of the Professional Attributes within that domain.

Table 1: The Professional Skills Domain: Attributes and Indicative Levels of

Professional Practice

Professional Attributes	Indicative Levels of Professional Practice
<p>The need to conduct an initial assessment or triage including to determine if the matter is appropriate for an NDR process.</p>	<p>Registered Practitioners (RPs) must ensure that participants are provided with the following:</p> <ul style="list-style-type: none"> (a) a description of the NDR process and the steps involved. (b) information on how to provide feedback or lodge a formal complaint in relation to the practitioner. <p>The initial assessment or intake may be conducted by a person other than the RP. It can take the form of a preliminary conference with the parties and should include:</p> <ul style="list-style-type: none"> (a) assessing what NDR process is suitable and whether variations are required (for example, using an interpreter or a co-mediation model in culturally and linguistically diverse communities, or introducing safeguards where violence is an issue). (b) explaining to participants the nature and content of any agreement or requirement to enter mediation or an NDR process, including confidentiality, costs and how they are to be paid. (c) identifying who is participating in the process and to what extent participants have authority to make decisions. (d) deciding venue, timing, and other practical issues.
<p>Support for self-determination and informed decision-making.</p>	<p>RPs should facilitate a fair process, giving the participants the opportunity to:</p> <ul style="list-style-type: none"> • communicate with each other. • exchange information and seek understanding. • identify, clarify, and explore interests, issues, and underlying needs. • consider their alternatives. • generate and evaluate options. • negotiate with each other. • reach and make their own decisions through both the initial assessment and the process itself.

	<p>RPs should also:</p> <ul style="list-style-type: none"> (a) ensure that participants are advised about the AMDRAS including complaints management guidelines thereunder and how it can be accessed. (b) ensure that participants prepare for the process, including through considering any advice or information that may need to be sought and/or exchanged. (c) where appropriate, refer participants to other sources of information, advice or support that may assist them. (d) inform participants about their roles and those of advisors, support persons, interpreters, and any other attendees. (e) advise participants about how they or the RP can suspend or terminate the process. (f) confirm each participant’s agreement to continue in the process. (g) ensure as far as possible that participants understand the process and substantive matters under consideration.
<p>Managing the NDR process.</p>	<p>This covers a number of elements including the following:</p> <ul style="list-style-type: none"> (a) RPs should conduct the process in a manner consistent with the process previously outlined to the participants and allowing variations consistent with the parties’ perceived needs. (b) The NDR process will ordinarily include a joint session of the participants in which they communicate directly with each other to identify, clarify, and explore interests, issues, and underlying needs. The process may also include separate sessions and shuttle negotiations. (c) The process can be conducted online and face-to-face, or a combination of both, as appropriate. (d) An RP may adjourn the process and conduct it over multiple meetings and in different locations. (e) The process may conclude regardless of whether the participants have reached an agreement. (f) An RP may suspend or terminate the

	<p>process if they form the view that it is no longer suitable or productive, for example where:</p> <ul style="list-style-type: none"> (i) a participant is unable or unwilling to participate or continue. (ii) a participant is misusing the process. (iii) a participant is not engaging in good faith, and/or the safety of one or more participants may be at risk. <p>(g) An RP should, where possible, advise of their intention to suspend or terminate the process.</p> <p>(h) If terminating the process, the RP should, where appropriate, encourage the participants to consider alternative procedures for resolving or managing the dispute.</p>
<p>Supporting parties to participate in the NDR process.</p>	<p>An RP should ensure that all participants are engaged at an appropriate level commensurate with the context (cultural or otherwise) of the process. The RP should also ensure that participants in the process are engaged in a manner that is relatively equal or fair.</p>
<p>Managing risks to fairness, safety, and abuse of process.</p>	<p>An RP must be alert to changing balances of power in NDR processes and manage them accordingly. In addition, an RP must consider the safety and comfort of participants and where necessary take steps, or modify the process, which may include:</p> <ul style="list-style-type: none"> (a) agreeing guidelines to encourage appropriate conduct. (b) activating appropriate security protocols. (c) using separate sessions, shuttle negotiation processes, communication technology, or other protective arrangements. (d) having a participant’s friend, representative or professional advisor attend any suspending or terminating the process, with appropriate steps to protect the safety of participants. (e) providing participants with information about other services or resources.
<p>Meeting their ethical, professional,</p>	<p>RPs must ensure that they understand the</p>

and legal obligations.	regulatory provisions which may affect their or the participants' conduct, or the process employed. See also Table 2, below.
Providing information, guidance, and advice as appropriate.	<p>This can include several aspects. One is where an RP uses a process such as advisory or evaluative mediation or conciliation that involves the provision of advice. In such a case, the RP must:</p> <ul style="list-style-type: none"> (a) obtain consent from participants to use the process. (b) ensure that within the professional area in which advice is to be given, they: <ul style="list-style-type: none"> (i) have current knowledge, skills, and experience. (ii) hold professional registration, membership, statutory employment, or their equivalent; and (iii) are covered by current professional indemnity insurance or have statutory immunity. (c) ensure that the advice is provided in a manner that maintains and respects the principle of self-determination. <p>Where the RP uses reality testing in the process, they must ensure that:</p> <ul style="list-style-type: none"> (a) it does not undermine the self-determination of the parties. (b) is used fairly with and between the parties; and (c) is based upon sound contextual knowledge of the dispute and the parties' role/s in that dispute.

Professional Ethics and Responsibilities Domain

8. Clause 62.3 of the Standards describes the Professional Ethics and Responsibilities domain. Table 2 below specifies the Indicative Levels of Professional Practice for each element of the Professional Attributes within that domain.

Table 2 – The Professional Ethics and Responsibilities Domain: Attributes and Indicative Levels of Practice

Professional Attributes	Indicative Levels of Professional Practice
Providing accessible and inclusive services.	(a) RPs should ensure that their services are

	<p>provided in a manner which clearly and accurately describes their areas of practice, expertise, fee structures, and means of referral or provision of services.</p> <p>(b) RPs may use de-identified information about any evaluation of their practice that could help participants to better understand the mediation services they offer.</p> <p>(c) Ensure that participants are advised about the Registered Practitioner’s obligations under AMDRAS and any applicable complaints procedures.</p>
<p>Supporting self-determination and informed decision making.</p>	<p>RPs must include this in all aspects of the NDR process, including the initial assessment. See also Table 1.</p>
<p>Providing information to the participants about the confidentiality of the process and any obligations to release confidential information in the specific NDR process.</p>	<p>(a) Confidentiality can vary depending upon the context of the dispute and the process employed. It can also be an important aspect of any settlement or agreement reached. This can include contractual, regulatory and referral aspects. RPs must ensure that they are both aware and understand these aspects and must discuss this with the participants as appropriate. See also Table 1.</p> <p>(b) RPs must respect the agreed confidentiality arrangements relating to participants and to information provided during the process, except:</p> <ul style="list-style-type: none"> (i) with the consent of the participant to whom the confidentiality is owed; or (ii) where non-identifying information is required for legitimate research, supervisory or educational purposes; or (iii) when required to do otherwise by law; or (iv) where permitted to do otherwise by ethical guidelines or obligations; or (v) where reasonably considered necessary to prevent an actual or potential threat to human life or

	<p>safety.</p> <ul style="list-style-type: none"> (c) Before holding separate sessions with different participants, an RP must inform participants of the confidentiality which applies to the sessions. (d) With a participant’s consent, an RP may discuss the process, or any proposed agreement, with that participant’s advisors or with third parties. (e) An RP is not required to retain documents relating to a process, although they may do so if they wish, particularly where duty-of-care or duty-to-warn issues are identified. (f) An RP must take care to preserve confidentiality in the storage and disposal of written and electronic notes and records of the process. This includes taking reasonable steps to ensure that administrative staff preserve confidentiality.
<p>Facilitating an even-handed, safe, and ethical process in accordance with the Code of Ethics.</p>	<p>See also Table 1 and Appendix 3 to the Standards.</p> <ul style="list-style-type: none"> (a) An RP must conduct the process in a fair, equitable and impartial way, without favouritism or bias in act or omission. (b) An RP must identify and disclose potential grounds of bias or conflict of interest before the process or emerging at any time during the process. (c) An RP must not act in cases involving a conflict of interest without the participants’ informed consent, and then only if, in the RP’s view, the conflict would not impair his or her impartial conduct of the process. (d) An RP must support participants to reach agreements freely, voluntarily, without undue influence, and based on informed consent. (e) An RP must give participants appropriate opportunities to speak to and be heard by one another in the process, and to articulate their interests, issues, and underlying needs. (f) An RP must ensure, so far as practicable,

	<p>that participants have sufficient time and opportunity to access sources of advice or information necessary for their decision-making.</p> <p>(g) An RP must encourage and support negotiations that focus on the participants' respective interests, issues, and underlying needs, and must encourage participants to assess any proposed agreements accordingly and with reference to their long-term viability.</p> <p>(h) An RP who uses reality testing in the process must ensure that it:</p> <ul style="list-style-type: none"> • does not undermine the parties' self-determination. • is used fairly with and between the parties; and • is based on sound contextual knowledge of the dispute and the parties' role/s in that dispute.
<p>Representing their services and competence honestly and transparently.</p>	<p>(a) RPs should ensure that their services are represented through promotional and other activities in a manner which clearly and accurately describes their areas of practice, expertise, fee structures, and means of referral to them and/or provision of their services.</p> <p>(b) A RP must obtain agreement from participants about the fees and charges payable and about how those fees and charges are to be apportioned between them. In particular:</p> <p>(i) An RP must not charge fees based on the outcome of a process or calculated in a way that could influence the way the RP conducts the mediation.</p> <p>(ii) If any fees or charges paid in advance exceed fees or charges payable for the process, the RP must return the excess promptly on conclusion or termination of the process.</p> <p>(c) An RP must not guarantee results or outcomes from the proposed process or</p>

	<p>make statements likely to create false expectations about favourable results.</p>
<p>Meeting their legal, regulatory, and professional obligations.</p>	<ul style="list-style-type: none"> (a) An RP must provide their professional services only where they have the competence to do so. (b) An RP must not use information obtained in an NDR process for personal gain or advantage. (c) An RP must adhere to the ethical code or standards prescribed by the professional organisation or association of which they are a member or by whom they are employed. (d) An RP should encourage participants to consider the interests of any vulnerable stakeholders. (e) An RP should encourage participants to obtain other professional support when appropriate but should refrain from recommending the services of particular individuals or firms. (f) An RP may liaise with other relevant professionals with permission from the relevant participant. (g) An RP should extend professional courtesy to other professionals engaged by the participants. (h) An RP should, where possible, engage in professional debriefing, peer consultation, and mentoring of less experienced RPs. (i) An RP must ensure that their insurance cover is appropriate to the legal and regulatory framework in which they are practising. (j) An RP must ensure that their CPD and other obligations under the AMDRAS and other professional affiliations are up to date and accurately represented.
<p>Providing guidance and advice only when competent and authorized to do so.</p>	<p>See also Table 1 and Appendix 3. Where an RP uses a process such as advisory or evaluative mediation or conciliation, which involves the provision of advice, the RP must:</p> <ul style="list-style-type: none"> (a) obtain consent from participants to use the process.

	<ul style="list-style-type: none"> (b) ensure that within the professional area in which advice is to be given, they <ul style="list-style-type: none"> (i) have current knowledge, skills, and experience. (ii) hold professional registration, membership, statutory employment, or their equivalent. (iii) are covered by professional indemnity insurance or have statutory immunity. (c) ensure that the advice is provided in a manner that maintains and respects the principle of self-determination.
<p>Providing a feedback and complaints mechanism with the ability to escalate complaints to an independent complaint-handling service.</p>	<ul style="list-style-type: none"> (a) An RP and/or the organisation for which they work must give participants details of the complaints-management system they have in place. (b) The complaints-management system should adhere to the principles inherent in the suggested model policy provided in Appendix 5.

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