

LA TROBE UNIVERSITY
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CONSULTATION DRAFT

AUSTRALIAN FAMILY DISPUTE
RESOLUTION PRACTITIONERS

DRAFT APPROVAL STANDARDS

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AUSTRALIAN FAMILY DISPUTE RESOLUTION PRACTITIONERS

DRAFT APPROVAL STANDARDS

1 - APPLICATION

1. These approval standards apply to any practitioner who seeks approval under the *Family Law Act 1975* ('the Act') to engage as a third party to assist families manage, settle or resolve separation-related family disputes through the use of facilitative processes. The facilitative process aims to maximise party self-determination while recognising the interests of any person directly affected by the dispute, especially children. These standards do not cover practitioners who provide expert advice or who enter into counselling contracts with clients.

2. The approval standards:

- specify requirements for such third parties ('family dispute resolution practitioners') who seek approval under the Act;
- define minimum qualifications and competencies for family dispute resolution practitioners;
- assist in informing clients, prospective clients and others of what qualifications and competencies they can expect of practitioners; and
- promote public confidence in facilitative dispute resolution processes used to resolve, settle and manage family conflict.

3. As a condition of ongoing approval, family dispute resolution practitioners must comply with ongoing Practice Standards. These Approval Standards should therefore be read in conjunction with the Practice Standards.

2 - DEFINITION OF FAMILY DISPUTE RESOLUTION PROCESS

1. A family dispute resolution process is a process in which the parties to a family dispute, with the assistance of a practitioner(s), identify disputed issues, develop options, consider alternatives and endeavour to reach agreement and/or enhance their communication based upon the principle of self-determination. Family dispute resolution processes are additionally informed by a focus on the interests of any dependent family members, particularly children, affected by the dispute.

2. Family dispute resolution processes are primarily facilitative processes that involve a third party (a 'family dispute resolution practitioner'), who provides assistance in managing the process of dispute and conflict resolution whereby the participants determine the outcomes. Practitioners do not contract to work as counsellors (though they may make use of counselling skills) nor do they provide advice. Family dispute resolution processes may include mediation, conciliation, conferencing and facilitation. Whether attendance at such processes is voluntary or compulsory, participants determine what if any outcomes result from such attendance.

3. Family dispute resolution processes may include the provision of expert information about children, parenting or asset distribution in a manner that does not compromise the principle of self-determination. In acting as a bridge between the principle of self-determination and the legislative requirements, such processes are likely to fall into the category of conciliation.

4. Family dispute resolution processes are not a substitute for the need of participants to obtain individual legal or other expert advice, or individual counselling or therapy. Further, it is recognised that such processes are not appropriate for all families or all types of disputes.

3 - FAMILY DISPUTE RESOLUTION PRACTITIONER

1. A family dispute resolution practitioner operates under the Act as a third party and manages primarily facilitative processes aimed at maximising participant self-determination while recognising the interests of others, especially children directly affected by the dispute. The practitioner is a skilled facilitator whose work must provide evidence of:

- good character (Section 3.2);
- their undertaking to comply with ongoing practice standards and compliance with legislative and approval requirements (Section 3.3);

- requisite qualifications to ensure that they are competent to conduct family dispute resolution processes (Section 4).

2. With respect to the requirement to be of 'good character', a practitioner must provide evidence that they are regarded as an honest and fair person by two members of their community, and that they are regarded as an appropriate person to be a family dispute resolution practitioner. Family dispute resolution practitioners must also meet the requirements of a police check in the State or States in which they practise. They must be without any serious prior conviction, and be without any impairment that could influence their capacity to discharge their obligations in a competent, honest and appropriate manner. They must also satisfy the approving body that they do not come into the category of a 'prohibited person' (or its equivalent) in any State or Territory of Australia.

3. The family dispute resolution practitioner must swear an oath or affirmation undertaking to comply with legislation, practice standards and approval requirements.

4 - QUALIFICATIONS

1. A family dispute resolution practitioner must be able to demonstrate appropriate competence by reference to the practice standards and core training, be able to show equivalent knowledge and skills or be 'experienced qualified' before commencing the role of a family dispute resolution practitioner (see below). A family dispute resolution practitioner who provides information in the context of a family dispute resolution process must be competent to do so and possess the appropriate skills and expertise.

2. Until 1 January 2008:

A family dispute resolution practitioner, unless approved as 'Experience Qualified' (see paragraph 4 below) must have completed at least five days training in conflict resolution or mediation including at least one training course of at least three days, and have engaged in at least 10 hours of supervised mediation in the 12 months immediately following completion of that training ('supervised mediation' is defined in the regulations). In addition, unless 'Experience Qualified,' a family dispute resolution practitioner must have successfully completed one of the following:

- an appropriate degree, or equivalent qualification in law or social sciences from a university, or former college of advanced education, of at least three years equivalent full-time duration, or

- an appropriate degree, diploma or other qualification in law or social science from another tertiary institution or a VET approved organisation to a National Framework level 6 standard, or
- a course with the equivalent of two years full-time tertiary study in a social science, or
- an assessed course of study in mediation or dispute resolution that is the equivalent of at least one year of full-time tertiary study .

3. After 1 January 2008:

Unless a practitioner is “Experience Qualified” (see paragraph 4 below), family dispute resolution practitioners must demonstrate to the approving body that they have completed:

(i) an appropriate degree, or equivalent qualification in law or social sciences from a university, or former college of advanced education, of at least three years study, equivalent full-time duration or a VET-approved organisation to a National Framework Level 6 Standards,

and

(ii) assessable training in the core areas set out below. The assessable training can be completed as part of (i) above or to the extent that this is not the case, the practitioner must have attended additional assessable training in the areas set out below at a minimum of National Framework Level 4 Standard:

- a) AT LEAST 35 hours of basic conflict resolution and mediation theory education and skills training, including ethics, intercultural awareness and the capacity for self-reflection;
- b) AT LEAST 35 hours of training on family, couple and child dynamics particularly relating to separation and divorce, with some attention to recognising abnormal indicators;
- c) AT LEAST 35 hours of training in family law that includes the following areas:
 - i. divorce and separation
 - ii. asset division and financial issues
 - iii. child support
 - iv. residence and contact
 - v. violence and abuse
 - vi. agreement drafting

- vii. relevant case law and precedents
 - viii. procedures that pertain to the Family Court, Federal Magistrates Service, or any other decision-making tribunal that may develop.
- d) AT LEAST 14 hours training in child-focused processes and practice;
- e) AT LEAST seven hours of training and/or facilitated discussion with respect to intake and assessment procedures and to outward referral resources and procedures;
- f) AT LEAST seven hours of supervised practice working with clients in a family dispute practitioner as a co-facilitator.

4. 'Experience qualified' practitioners must be assessed by no less than three approved family dispute resolution practitioners as demonstrating a level of competence in the practice standards and core training areas outlined in (a-f) above, to ensure he/she is appropriate for the role of a family dispute resolution practitioner in that community, and the dispute resolution practitioner is either:

- a) from a linguistically and culturally diverse community, for which specialised skills and knowledge are needed and/or from a rural/or remote community where there is difficulty in gaining tertiary or similar qualifications; or
- b) a practitioner who has worked for not less than 12 months within the last three years in a family relationship services role similar to that of family dispute practitioner; or
- c) a practitioner who has worked as a Family and Child Mediator or Conciliator in an FRSP-approved agency for at 12 months before entering private practice.

5. Ongoing approval as a family dispute resolution practitioner is contingent upon the practitioner meeting the practice standards and competencies detailed in the Practice Standards.