

# **Guide to Good Practice for Complaints Handling for Mediation Practitioners**

## **INTRODUCTION**

The purpose is to encourage best practice in complaints handling and to meet National Accreditation Standards.

The guide is based on the following industry needs which have been identified by the industry forum as essential elements of a complaints handling system:

- 1 an accessible and transparent complaint handling system,
- 2 resolution or appropriate response to conflict,
- 3 timely response with care to all involved in the complaint,
- 4 confidentiality in relation to any signed confidentiality agreements,
- 5 clarity regarding expectations of the complainant and
- 6 a system that connects the insight gained from complaints back into the mediation industry (known as feedback or reflective practice).

## For implementation by RMABs and other professional mediation bodies

### 1. DEFINITION OF A COMPLAINT

A complaint is any expression of dissatisfaction or concern made about a mediator when the mediator is acting in a professional role.

Complaints must be made in writing.

Complaints will be accepted only if made within 28 days of the mediation where the complaint arose.

### 2. GUIDING PRINCIPLES

#### **Overarching principles:**

The Australian Mediation Association recognises that people are free to raise complaints and have them resolved in a manner that is fair, sensitive and prompt.

The Australian Mediation Association recognises complaints as a feedback mechanism to improve the organisation's practices, policies and procedures.

The Australian Mediation Association will support a cooperative process in managing complaints.

#### **In particular:**

- The Australian Mediation Association will encourage complaints to be raised at an early stage.
- The Australian Mediation Association will handle complaints promptly, and advise complainants of appropriate timeframes at all stages of the process.
- The Australian Mediation Association will treat complaints seriously and sensitively.
- The complainant must raise the complaint with the mediator in the first instance either verbally or in writing. If the complaint cannot be resolved informally at that stage, it will be progressed through the complaints handling process with the least level of intervention possible. The Australian Mediation Association will ensure that a mediator will not handle a complaint about himself/herself or about any process in which he/she took part.

- The Australian Mediation Association will ensure that each person has a right to be heard, to be treated without bias, to be informed of complaints being made, to have a right to respond and to have information about the status of the complaint. That is, complaints will be handled with procedural fairness.
- All information will be treated with due confidentiality.
- The Australian Mediation Association will use information gained out of the complaint process as feedback to improve the practice of mediation, wherever possible.
- A complaint that cannot be resolved within the organisation may be referred to an independent industry body.

### **3. ACCESSIBILITY**

To ensure the complaints handling process is accessible to mediators and parties to mediation:

- The Australian Mediation Association will advise the parties of the Australian Mediation Association's code of practice, including the availability of the complaints handling process, prior to mediation.
- The Australian Mediation Association will advise mediators of the complaint handling procedure adopted by The Australian Mediation Association upon appointment.

### **4. POSSIBLE OUTCOMES**

A range of outcomes may result from the complaints handling process. These may include, but are not limited to, any of the following:

- The matter is resolved.
- The complaint handler may determine that the matter cannot proceed further.
- The complaint handler may recommend that the mediator receives professional development such as coaching, further training, education, mentoring or supervision.
- The complaint handler may refer an issue that is the subject of the complaint to the Australian Mediation Association to be addressed by way of, for example, policy review and/or development.
- The complaint may be referred to an industry body if the complaint cannot be resolved within the Australian Mediation Association.

### **5. CONFIDENTIALITY**

- The Australian Mediation Association and the complaint handler will ensure that confidentiality arising from any signed agreements regarding the initial mediation (the subject of the complaint) will be maintained.
- The complaint handler will ensure that information regarding the complaint is handled appropriately. Those who have access to any information regarding

the complaint will only have access to the information necessary for them to carry out their role.

- The complaint handler should keep clear and objective records which show how the complaint has been handled. Records of any agreements and outcomes should also be kept. The outcomes and agreements may be provided to the complainant and the mediator, and to the Australian Mediation Association.
- The Australian Mediation Association will ensure that any documents or records kept, arising from a complaint or its investigation, will be held in a safe and secure place. Documents should be kept for a period of two years to allow access for analysis and/or research.

## 6. INSIGHT AND DEVELOPMENT

- Any insights gained during the complaints handling process will be reflected back to the Australian Mediation Association with a view to improving mediation practice and organisational systems.
- For this purpose, the Australian Mediation Association will maintain statistics showing the number of complaints, the type of complaints, how they were dealt with, the amount of time taken to deal with each matter and the outcome (without identifying characteristics).
- Where appropriate such insight may be shared within the mediation industry.

## EXAMPLE COMPLAINTS HANDLING PROCEDURES

The following procedures detail the steps that will be taken by the Australian Mediation Association in the event of one or more parties to a mediation raising a complaint about a mediator whilst the mediator was acting in a professional capacity.

- Step 1.** The complaint handler will make initial contact with the complainant within 2 working days so see if the complainant has raised the complaint with the mediator in the first instance.
- Step 2.** The complaint handler will conduct an initial assessment which will involve discussing with the complainant the concerns and the desired outcome. The complaint handler will listen to the complainant and, if it is appropriate, resolve the matter at this initial point of contact.
- Step 3.** If appropriate, the complaint handler may facilitate the complainant to discuss the issues with the mediator directly if this has not already been tried. This meeting may be facilitated by the complaint handler to ensure both parties communicate openly in a problem solving environment.

If steps 2 and 3 are unsuccessful, the following process will be undertaken.

**Step 4.** In the case of a verbal complaint being made, the complainant will be asked to put the complaint in writing. The Australian Mediation Association will offer assistance to the complainant to put a complaint in writing.

**Step 5.** The complaint handler will ask the complainant's permission to inform the mediator of the details of the complaint, including the complainant's name. If the complainant does not agree to the mediator being given the details of the complaint, the complaint handler will inform the complainant that this may limit the effectiveness of the complaints handling process.

**Step 6.** The complaint handler will conduct an initial assessment which will involve:

- a. discussion with the mediator, informing him/her of the complaint and listening to the response,
- b. assessment of the willingness of all parties to cooperate with the complaint handling process,
- c. assessment of the nature of the complaint and
- d. selection of a dispute resolution process to suit the circumstances.

**Step 7.** Following the initial assessment, the complaint handler will provide information to the complainant and the mediator about the process to be adopted, within seven days after initial contact if practical.

The complaint handler will inform both the complainant and the mediator of the expected timeframe of the complaint handling process and will keep them informed of any changes to the expected timeframe.

**Step 8.** A dispute resolution process may include:

- discussion between the complainant and the mediator,
- negotiation between the parties,
- mediation of the complaint, if both parties agree, and/or
- other third party assisted dispute resolution.

If the complaint cannot be resolved through any of the above methods, an investigation of the complaint by the complaint handler may be appropriate. Any investigation will result in a recommendation.

**Step 9.** Subsequent to the conclusion of the dispute resolution process:

- feedback will be given to the complainant and the mediator about the outcome of the process and

- the mediation industry body will be informed of the complaint and the outcome.

## **CONTACT**

The person/position with overall responsibility for the complaints handling system is

Callum Campbell who can be contacted on 1300 MEDIATE (633 428) or visit [www.ama.asn.au](http://www.ama.asn.au)

The complaints process will be facilitated by the Office Manger, Cindy Limque.