

Information or advice – what do the National Standards say?

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With thanks to Professor Tania Sourdin for her review of this article and her valuable comments.

Some mediators are not opting into the National Standards because they offer what they believe to be “advice” during mediation. They know that the Standards stipulate particular requirements for a mediator to give advice, and they perceive that these requirements may be difficult to meet.

So it is worth dipping back into the Standards to understand precisely what is meant by advice. When is it advice and when is it information?

'When I use a word,'
Humpty Dumpty said in
rather a scornful tone, 'it
means just what I choose
it to mean - neither more
nor less.' *Lewis Carroll*

The National Standards describe mediation primarily as a facilitative process in which mediators:

“... assist in managing the process of dispute and conflict resolution whereby the participants agree upon the outcomes, when appropriate. Mediation is essentially a process that maximises the self determination of the participants. The

principle of self determination requires that mediation processes be non-directive as to content.” Practice Standards p 5

So the principle of self-determination is the litmus test for whether input by the mediator is appropriate.

The Practice Standards distinguish between two types of input: information and advice. Let’s consider “**information**” first.

“Some mediation processes may involve participants seeking expert information from a mediator which will not infringe upon participant self-determination. Such information is deemed to be consistent with a mediation process if that information is couched in general and non-prescriptive terms, and presented at a stage of the process which enables participants to integrate it into their decision making.” p 5

From this, LEADR recognises that the National Standards allow for some information to be provided by mediators provided that it supports the participants’ own decision making. LEADR retains its preference for mediators wherever possible to facilitate participants themselves to identify the information that would be useful to them and to generate and evaluate a range of options. The primary tool for doing this is well-crafted open questions. However, LEADR also accepts that on occasion mediators may make

comments that provide the type of information described by the National Standards. Examples of such comments include:

- “At this stage, many people would consider getting financial advice about this. Perhaps you will give that some thought.”
- “In the past, I have seen employers decide to ... You may like to find out what would be likely in this circumstance.”
- “The Department of Family Services publishes a book on the impact of divorce on children. You can get a copy from ...”
- “There are some resources available that can help you understand what options could assist at XYZ website – you can get a list from the front office”
- “In situations such as these, it is possible that the court may take into account ... this may be something that you could discuss further with your lawyer.”

In all of these examples, the mediator draws on his or her own knowledge to suggest ways in which the participants might access additional information. The information is just that – it is non-prescriptive and can be used or ignored to the extent that the participant chooses.

If mediators provide information of this type, the National Standard prescribes only that they meet the training, assessment, experience and continuing professional development requirements as they apply to all mediators who are seeking accreditation under the National Standards.

Turning our attention to “**advice**”, it is important to distinguish between **procedural** and **expert** content advice.

There are many references in the National Standards to the responsibility of mediators to advise about **procedural** matters such as the process to be used, role of the mediator, costs, confidentiality, indemnity and how a mediation may be terminated. (See in particular Section 3 of the Practice Standards p 6-7.) The National Standards do not prescribe particular requirements for advising about these and other procedural matters.

In relation to **expert** content advice, the National Standards identify that:

“Some mediators may use a ‘blended process’ model whereby they provide advice. These processes are sometimes referred to as ‘advisory mediation’, ‘evaluative mediation’ or ‘conciliation’. Such processes may involve the provision of expert information and advice, provided it is given in a manner that enhances the principle of self-determination and provided that the participants request that such advice be provided.” Practice Standards p 6

To offer this type of advice the National Standards do stipulate particular requirements. The Approval Standards (p 8) prescribe that mediators who provide expert advice must:

- a. Maintain their registration or membership or equivalent within the professional area in which advice is to be given, and
- b. Have completed an appropriate degree, or equivalent qualification in the area of their expertise from a university or former college of advanced education, of at least four years equivalent full-time duration, or a VET-approved

organisation to a National Framework Level 6 standards; and

- c. Have a minimum of five years' experience in the professional field in which they seek to provide advice.

Referring to a. above, members of Tribunals and other bodies may use blended processes within those bodies only, in which case continued 'membership' of those bodies is sufficient. Membership of another related professional organisation is not required. Also allowed are positions deemed 'equivalent' such as a conciliator employed with a court or tribunal.

So the Standards are clear that any mediator wishing to use a blended process must meet the additional expert qualification requirements and that such mediators must:

"...obtain the consent of participants prior to providing any advisory process." Practice Standards p 6

In summary:

If you are a mediator who intends to offer only information that "is couched in general and non-prescriptive terms, and presented at a stage of the process which enables participants to integrate it into their decision making", then the National Standards do not require that you hold a professional membership or registration beyond accreditation as a mediator.

In contrast, if you are a mediator who provides "expert information and advice" within a particular professional area of expertise, then the National Standards require that you have received a specified minimum training in this subject area and that you maintain your professional membership or registration. The National Standards also require that you provide evidence of this to LEADR (or other Recognised Mediator Accreditation Body) when you apply for national accreditation.

If you would like additional information about the National Standards, please go the LEADR website or you can obtain the documents as follows:

- The National Mediator Approval Standards, [click here >>](#) or find at [http://www.leadr.com.au/documents/Approval standards.pdf](http://www.leadr.com.au/documents/Approval%20standards.pdf)
- The National Mediator Practice Standards, [click here >>](#) or find at [http://www.leadr.com.au/documents/Practice standards.pdf](http://www.leadr.com.au/documents/Practice%20standards.pdf)
- Application for accreditation by LEADR to the National Standards, [click here>>](#) [www.leadr.com.au/documents/Application for accred by LEADR and to NS.doc](http://www.leadr.com.au/documents/Application%20for%20accred%20by%20LEADR%20and%20to%20NS.doc)