



**Australian Government**

**Department of Education, Employment and Workplace Relations**

# **CHCMED418C Identify the need for alternative dispute resolution**

**Release: 1**

## **CHCMED418C Identify the need for alternative dispute resolution**

### **Modification History**

Not Applicable

### **Unit Descriptor**

#### **Descriptor**

This unit describes the knowledge and skills required for community workers to establish and manage the communication process to enable parties to identify the need for alternative dispute resolution

### **Application of the Unit**

#### **Application**

This unit may apply to mediation work in a range of community service contexts

### **Licensing/Regulatory Information**

Not Applicable

### **Pre-Requisites**

Not Applicable

## Employability Skills Information

### Employability Skills

This unit contains Employability Skills

## Elements and Performance Criteria Pre-Content

Elements define the essential outcomes of a unit of competency.

The Performance Criteria specify the level of performance required to demonstrate achievement of the Element. Terms in italics are elaborated in the Range Statement.

## Elements and Performance Criteria

### ELEMENT

### PERFORMANCE CRITERIA

#### 1. Identify the dispute

- 1.1 Encourage parties to the dispute to present the issues
- 1.2 Discuss parties' willingness and capability to resolve the issues
- 1.3 Analyse issues and parties' willingness and capability, to assess the most suitable resolution process
- 1.4 Clarify the need to seek advice on legal or factual complexity of the matter
- 1.5 Identify key stakeholders

#### 2. Outline dispute resolution models

- 2.1 Outline models of mediation process
- 2.2 Describe directed conciliation as an application of mediation in a legal setting
- 2.3 Consider the opportunity for involving key parties in *alternative dispute resolution process*
- 2.4 Outline the level of preparation and commitment to resolution for the different ADR options

**ELEMENT****PERFORMANCE CRITERIA**

- |   |  |
|---|--|
| 3. Support parties in identifying the most appropriate dispute resolution process | 3.1 Provide referrals to ADR experts   |
|   | 3.2 Follow up on initial contact with ADR practitioners occurs   |
|   | 3.3 Check options and requirements for alternative dispute resolution with parties throughout the progress of resolution |

## Required Skills and Knowledge

### REQUIRED SKILLS AND KNOWLEDGE

This describes the essential skills and knowledge and their level required for this unit.

#### *Essential knowledge:*

The candidate must be able to demonstrate essential knowledge required to effectively do the task outlined in elements and performance criteria of this unit, manage the task and manage contingencies in the context of the identified work role

These include:

- Understanding of the application of legislation including the Family Law Act
- Awareness of different cultural systems for dispute resolution
- The legal, social, cultural, and economic and context within which the ADR practice is occurring
- Other dispute resolution procedures
- Relevant relationships, such as couple, family and group relationships
- Availability of professional, academic, technical, community and educational resources for client use or referral
- The legal and social standards that would be applicable if the case was taken further to trial
- The structures, resources, processes and requirements of the agency

#### *Essential skills:*

It is critical that the candidate demonstrate the ability to:

- Apply knowledge, skills and ethics relevant to the nine areas of practice as outlined in the 2001 NADRAC standards ([www.nadrac.gov.au](http://www.nadrac.gov.au))
- Use appropriate interpersonal skills and knowledge to guide the ADR process
- Apply ADR with an awareness and sensitivity to conflict, culture and context

In addition, the candidate must be able to effectively do the task outlined in elements and performance criteria of this unit, manage the task and manage contingencies in the context of the identified work role

These include the ability to:

- Apply skills in negotiation, communication and decision-making

## REQUIRED SKILLS AND KNOWLEDGE

- Demonstrate understanding and implementation of relevant procedures
- Establish confidence with parties through using appropriate interpersonal styles and methods
- Identify accurately issues of parties in dispute
- Apply the agency systems
- Refer parties to appropriate others to match identified needs
- Interpret accurately and comply with legal and procedural requirements
- Apply accurate understanding of own work roles and responsibilities in relation to service delivery.
- Maintain confidentiality and to deal effectively with breaches of confidentiality especially when client safety is threatened
- Demonstrate application of skills in:
  - questioning and active listening that establishes client confidence and facilitates disclosure
  - problem solving skills
  - literacy and communication to analyse, evaluate and present information including preparing documents and reports related to legal requirements and client needs

## Evidence Guide

### EVIDENCE GUIDE

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, the Range Statement and the Assessment Guidelines for this Training Package.

*Critical aspects for assessment and evidence required to demonstrate this unit of competency:*

- The individual being assessed must provide evidence of specified essential knowledge as well as skills
- Evidence of competency in this unit will need to be assessed over a period of time in order to gather evidence of consistent performance
- This will include contexts applicable to the work environment, such as actual or simulated workplace situations involving a combination of direct, indirect and supplementary forms of evidence
- Evidence will be determined by selection from the

## EVIDENCE GUIDE

Range Statement, justified in terms of work requirements, work roles and responsibilities and occupational specialisations

- Access and equity considerations:*
- All workers in community services should be aware of access, equity and human rights issues in relation to their own area of work
  - All workers should develop their ability to work in a culturally diverse environment
  - In recognition of particular issues facing Aboriginal and Torres Strait Islander communities, workers should be aware of cultural, historical and current issues impacting on Aboriginal and Torres Strait Islander people
  - Assessors and trainers must take into account relevant access and equity issues, in particular relating to factors impacting on Aboriginal and/or Torres Strait Islander clients and communities

- Context of and specific resources for assessment:*
- This unit can be assessed independently, however holistic assessment practice with other community services units of competency is encouraged
  - Where assessment is conducted within the workplace there are no resource implications above those normally available in the workplace
  - Where assessment is conducted in a simulated or non-workplace environment then access to the necessary equipment and research resources should be provided
- Access to simulated exercises, case studies related to mediation service delivery issues is also required if non-workplace assessment paths are utilised

## EVIDENCE GUIDE

### *Method of assessment:*

- Demonstration of competency within the working environment in preparing for the mediation process
- Where there is not an opportunity to cover all relevant aspects in the work environment, the remainder should be assessed through realistic simulations, projects, previous relevant experience or oral questioning on 'what if?' Scenarios
- Observation of processes and procedures, oral and/or written questions on Essential knowledge and skills and consideration of required attitudes
- Where performance is not directly observed and/or is required to be demonstrated over a period of time and/or in a number of locations, any evidence should be authenticated by colleagues, supervisors, clients or other appropriate persons
- Review of any documentation produced by the candidate related to the preparation for mediation

### *Related units:*

This unit should be assessed after or in conjunction with related units:

- CHCMED419C Facilitate alternative dispute resolution processes
- CHCCOM403A Use target communication skills to build relationships

## Range Statement

### RANGE STATEMENT

The Range Statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. Add any essential operating conditions that may be present with training and assessment depending on the work situation, needs of the candidate, accessibility of the item, and local industry and regional contexts.



## RANGE STATEMENT

### *Knowledge refers to:*

- The understanding of relevant theories, principles, practices their application and other aspects of knowledge, which may be desirable or necessary in order to practice effectively an ADR process

### *Alternative dispute resolution*

- ADR refers to processes, other than judicial determination, in which an impartial person (an ADR practitioner) assists those in a dispute to resolve the issues between them.
- ADR processes may be *facilitative, advisory, determinative or*, in some cases, a combination of these
- ADR may be used for different categories of dispute, for example, family and child mediation, community mediation, victim-offender mediation, equal opportunity conciliation, workers' compensation conciliation, tenancy conciliation or commercial arbitration  
Multi-party mediation may involve several parties or groups of parties

## RANGE STATEMENT

*Alternative dispute resolution process refers to:*

- Knowledge about the procedural and understanding of requirements for dispute resolution within the agency
- The theory, systems and methods of dispute resolution processes
  - the management and conduct of a dispute resolution process
  - stages of a dispute resolution process, and how they can be used most effectively
  - assessment of individual cases to determine limitations of the ADR processes
  - recognition of when a ADR process is not effective
  - how to deal with non-compliance with the family law act rules and regulation procedural requirements
  - how to ensure fairness within procedure
  - criteria for exercising discretion on procedural matters, for example, consultations with individual clients, and duration
  - how to identify who may be significant others and how to manage their appropriate involvement
  - how to enable clients to consider all relevant information and work towards their own decisions

## RANGE STATEMENT

*Client/s could include:*

- Individuals (inclusive of children, youth, adults and the aged)
- Referred or self-referred clients
- Voluntary and involuntary clients
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*Issues presented could be sourced from:*

- Interviews with clients, family, significant others and carers
- Applications and other forms
- Case documentation
- Using specialist communicators
- Information from professionals
- Information from service providers
- Previous file records
- Client consent (verbal and written)

*Cultural perspective:*

- The significance of the diversity of the clients involved in ADR, including gender, religion, age, culture, language, race, education, socioeconomic status, and disability
- Different cultural attitudes of members within a family
- Cultural variations on the agreed norms and range of behaviours accepted as 'family practices'
- The relevance of culture in relation to problem-solving and dispute resolution
- The relevance of culture in relation to negotiation, concessions and compromise
- Cultural variations in relation to written, spoken and non-verbal communication
- Cultural attitudes towards physical space, venue and time
- Cultural attitudes towards the role of outsiders in dispute resolution
- Cultural attitudes in relation to the role of law, the courts, lawyers and professional advisers

## **Unit Sector(s)**

Not Applicable