

SAMOA

Arrangement of Provisions

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|---------------------------------|--------------------------------------|
| 1. Short title and commencement | 8. Section 13 amended |
| 2. Section 2 amended | 9. New sections 13A and 13B inserted |
| 3. New Part IIA inserted | 10. Section 16 substituted |
| 4. Section 7 amended | 11. Consequential amendment |
| 5. Section 8 substituted | 12. Transitional |
| 6. Section 9 amended | |
| 7. Section 11 substituted | |

2013, No. 18

AN ACT to amend the Alternative Dispute Resolution Act 2007 (“principal Act”). *[9th August 2013]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement - This Act may be cited as the Alternative Dispute Resolution Amendment Act 2013, and commences on the date it is assented to by the Head of State.

2. Section 2 amended - For section 2 of the principal Act:

- (a) in the definition of “alternative dispute resolution”, after “arbitration,” insert “judicial settlement,”;
- (b) in the definition of “mediation session”, after “means a meeting” insert “(including a meeting conducted by telephone, video conferencing or any other electronic means)”;
- (c) insert the following definitions into their alphabetical positions:

““Council” means the Mediation Council established by section 6A(1);

“mediation” means a structured process, based on the principle of self-determination, undertaken under this Act comprising one (1) or more mediation sessions in which one (1) or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following:

- (a) identify issues in the dispute;
- (b) explore and generate options;
- (c) communicate with one another;
- (d) reach an agreement to resolve the whole or part of the dispute.

“mediation communication”:

- (a) means -
 - (i) anything said or done; or
 - (ii) any document prepared; or
 - (iii) any information provided,

for the purpose of or in the course of mediation; but

- (b) does not include an agreement to mediate or a mediated settlement agreement.

“Ministry” means the Ministry responsible for the administration of this Act;

“rules” means rules made under section 16.”.

3. New Part IIA inserted - For the principal Act, after section 6, insert:

**“PART IIA
MEDIATION COUNCIL**

6A. Establishment-(1) The Mediation Council is established comprising the following members:

- (a) the Chief Justice, as chairperson;
- (b) a Judge of the District Court, appointed by the Chief Justice;
- (c) the President of the Samoa Law Society or his or her nominee;
- (d) the Attorney General or his or her nominee;
- (e) the Ombudsman or his or her nominee;
- (f) the Chief Executive Officer of the Ministry or his or her nominee;
- (g) the President of the Accredited Mediators of Samoa Association or his or her nominee;
- (h) the President of the Chamber of Commerce or his or her nominee;
- (i) a member appointed by the Chief Justice in consultation with the other members of the Council.

(2) In this section, “appointed member” means a member of the Council appointed under subsection (1)(b) or (i).

6B. Terms, vacancy and termination-(1) An appointed member:

- (a) may be appointed for a term of up to three (3) years; and
- (b) is eligible for re-appointment; and
- (c) on expiry of the term of appointment, continues until re-appointed or a successor is appointed.

(2) The office of an appointed member becomes vacant if:

- (a) the member fails to attend three (3) consecutive meetings of the Council without the approval of the chairperson; or

(b) the member's appointment is terminated under subsection (3); or

(c) the member dies.

(3) The Council may terminate the appointment of an appointed member for inability to perform the functions of the Committee arising from infirmity of body or mind or for misconduct in the office of a member.

6C. Functions-(1) The Council has the following functions:

- (a) to regulate and control mediation in Samoa, including the regulation and control of mediators from other countries who undertake mediation in Samoa;
- (b) to promote and uphold good and acceptable standards of practice of mediation;
- (c) to promote the interest of the public and the interest of mediators on mediation in a manner that is fair and just to all;
- (d) to promote and encourage proper conduct by mediators;
- (e) to suppress illegal, dishonourable, improper and unprofessional practices and conduct by mediators;
- (f) to preserve and maintain the integrity and status of mediators;
- (g) to promote opportunities for the acquisition and diffusion of knowledge of the law and the proper practice of mediation;
- (h) to package and deliver or sanction the packaging and delivery of trainings, conferences, workshops and any other educational programmes with a view to promoting proper conduct of mediation;
- (i) to initiate or contribute to the promotion, development and reform of the laws on mediation for the better conduct and provision of mediation;

- (j) to provide a means for the amicable settlement of professional differences and disputes among mediators;
- (k) if requested, to provide advice to an accreditation board established by the rules to be responsible for the accreditation of mediators;
- (l) to carry out any other functions given to it under this Act or any other law.

(2) The Council has all the necessary and incidental powers to carry out its functions under this Act, rules or any other law.

6D. Meetings and Secretary-(1) The following provisions apply to a meeting of the Council:

- (a) the chairperson, in consultation with majority of other members of the Council, determines the date, time and place of meetings;
- (b) chairperson or, if the chairperson is absent, the Judge appointed under section 6A(1)(b), presides at a meeting;
- (c) five (5) members constitute a quorum;
- (d) all matters are to be decided by majority of votes of the members present and voting;
- (e) the chairperson has a deliberative vote and a casting vote;
- (f) minutes are to be kept by the Secretary and to be confirmed by the members and signed by the presiding member at its next meeting.

(2) Subject to this Act, the Council may regulate its own procedures.

(3) The Chief Justice may appoint an employee of the Ministry as Secretary of the Council.

6E. Protection of members-(1) A member of the Council is not personally liable for any act done in good faith in carrying out the functions or powers of the Council under this Act or any rules or law.

(2) An act or proceeding of the Council is not to be invalidated if:

- (a) there is a vacancy in the Council; or
- (b) there is an irregularity in the composition or appointment of an appointed member or nominee of the Council; or
- (c) an omission, defect or irregularity does not affect the substantive merits of any act or proceeding of the Council.

6F. Administration-(1) The Ministry must provide necessary number of employees of the Ministry for the administration and management of the Council.

(2) The Council may issue directives, signed by the chairperson, to the employees on matters about mediation or this Act.

6G. Service of documents - A document required to be served on the Council is to be served by:

- (a) personally serving it on the Secretary; or
- (b) sending it by registered post to the Secretary of the Council.”.

4. Section 7 amended - For section 7 of the principal Act, after subsection (2) insert:

“(3) When referring a matter to mediation under subsection (2), the court may take into account any factors prescribed by the rules.”.

5. Section 8 substituted - For section 8 of the principal Act substitute:

“8. Confidential information-(1) All mediation communications are confidential and must not be disclosed by a person except as authorised under subsection (2) or (3).

(2) A person is authorised to disclose a mediation communication if:

- (a) the disclosure is made with the consent of -
 - (i) each of the parties to the mediation; or
 - (ii) the mediator or all the mediators, for the mediation; or
 - (iii) the person who made the mediation communication, for mediation communication made by a person who is not a party to the mediation or not a mediator; or
- (b) the content of the mediation communication is information that has already been made available to the public, except for information that is only in the public domain due to an unlawful disclosure; or
- (c) the content of the mediation communication is information that is otherwise subject to discovery in civil proceedings or to other similar procedures in which parties are required to disclose documents in their possession, control, custody or power; or
- (d) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or serious harm to the well-being of a person aged under 18 years or a person with mental or bodily incapacity or infirmities; or
- (e) the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of a person to whom the mediation communication relates; or
- (f) the disclosure is made for the purpose of seeking legal advice on the mediation; or
- (g) the disclosure is made pursuant to an enactment or other law.

(3) A person may disclose a mediation communication with leave of the court under section 11:

- (a) for enforcing or challenging a mediated settlement agreement;
- (b) for establishing or disputing an allegation or complaint, pursuant to the rules, of professional misconduct made against a mediator or any other person who participated in the mediation in a professional capacity;
- (c) for any other purpose that the court considers justifiable in the circumstances of the case.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months, or both.”.

6. Section 9 amended - For section 9(a) of the principal Act, delete “on the order of a court”.

7. Section 11 substituted - For section 11 of the principal Act substitute the following sections:

“11. Admissibility and disclosure of evidence-(1) A mediation communication may be admitted in evidence in any proceedings (including judicial, arbitral, administrative or disciplinary proceedings) only with leave of the court under subsection (2).

(2) The court specified in subsection (3):

- (a) may, on application by any person, grant leave for a mediation communication to be disclosed under section 8(3) or to be admitted in evidence under subsection (1); and
- (b) must take into account the following matters in deciding whether to grant leave for a mediation communication to be disclosed or admitted in evidence -

(i) whether the mediation communication may be, or has been, disclosed under section 8(2);

(ii) whether the leave has been granted to disclose a mediation communication under section 8(3);

(iii) whether it is in the public interest or the interests of the administration of justice for the mediation communication to be disclosed or admitted in evidence;

(iv) any other circumstances or matters that the court considers relevant.

(3) The court specified for subsection (2) is:

(a) the Supreme Court if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Supreme Court;

(b) the District Court if the mediation communication is sought to be disclosed or admitted in evidence in any proceedings in the District Court;

(c) the District Court in any other case.

11A. Directions - At any time after the commencement of proceedings, any party or the mediator may apply to the court for directions on any matter relating to the mediation of issues in those proceedings.”.

8. Section 13 amended - In section 13 of the principal Act, for “The parties to a mediation undertaken in accordance with this Act may jointly” substitute “A party to any mediation may”.

9. New sections 13A and 13B inserted - In the principal Act, after section 13, insert:

“13A. Pre-filing mediations - The Chief Justice may issue written directives in relation to proceedings that should not be filed in court unless mediation has been attempted.

13B. Mediation outside courts - This Act may, by Rules, apply to and regulate mediation undertaken outside the court system.”.

10. Section 16 substituted - For section 16 of the principal Act substitute:

“16. Rules and forms-(1) The Head of State, acting on the advice of the Prime Minister and with the concurrence of the Rules Committee, may make rules to give effect to or for the purpose of this Act, and in particular to make rules to provide for the following:

- (a) the training, accreditation and registration of qualified mediators;
- (b) the establishment of an accreditation board and its functions;
- (c) the procedures and powers to be applied by mediators in mediation sessions; and
- (d) the powers of court officers to conduct mediation sessions, or to perform any role or power in relation to mediation sessions;
- (e) subject to subsection (3), the fees for mediators for work undertaken in mediation sessions;
- (f) the powers of the court to require parties to undertake any alternative dispute resolution procedures ordered under this Act;
- (g) the regulation of mediation outside of the court system.

(2) Rules may prescribe offences and penalties for fine not exceeding 10 penalty units or imprisonment not exceeding 12 months, or both.

(3) Any fees prescribed in the rules are subject to the prior approval of the National Revenue Board established under the Public Finance Management Act 2001.

(4) The Chief Justice may approve forms for the purposes of this Act.”.

11. Consequential amendment - For references to “Regulations” in sections 5, 6, and 15(7) of the principal Act, substitute “Rules”.

12. Transitional - At the commencement of this Act:

- (a) the existing Mediation Steering Committee continues to function as if it were the Council, until the Chief Justice decides otherwise; and
- (b) a person who has already been accredited in Samoa as a mediator continues to act as a mediator as if the person were accredited under this Act and the rules.

**The Alternative Dispute Resolution Amendment Act 2013
is administered by the Ministry of Justice
and Courts Administration.**

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