



SAMOA

ALTERNATIVE DISPUTE RESOLUTION ACT 2007

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ALTERNATIVE DISPUTE RESOLUTION ACT 2007

2007

No.30

AN ACT to provide for the application of alternative dispute resolution procedures in civil and criminal cases in Samoa, and for related purposes.

[Assent and commencement date: 21 November 2007]

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

PART 1 PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Alternative Dispute Resolution Act 2007.

(2) This Act commences on the date that it is assented to by the Head of State.

(3) This Act applies despite the provisions of any other law or Rules of any Court relating to procedures in civil and criminal cases.

2. Interpretation – In this Act, unless the context otherwise requires:

“alternative dispute resolution” means any process used to resolve disputes between parties in civil and criminal proceedings which is outside the usual court-based litigation model, and includes processes of mediation, arbitration, judicial settlement, reconciliation and conciliation applied under this Act;

“arbitration” is a process by which an arbitrator resolves civil proceedings, otherwise than by agreement between the parties;

“conciliation” is a process to lessen animosity or disagreement between parties in any dispute involving criminal or civil proceedings;

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

“court” means the Supreme Court or District Court of Samoa;

“mediation” means a structured process, based on the principle of self-determination, undertaken under this Act comprising 1 or more mediation sessions in which 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;

“mediation session” means a meeting (including a meeting conducted by telephone, video conferencing or any other electronic means) between people in dispute and a mediator for the purpose of resolving the dispute by mediation, and includes anything done for the purpose of:

- (a) arranging the meeting (whether or not successfully); or
- (b) following up anything raised in the meeting;

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

“party” to an alternative dispute resolution procedure, does not include the mediator or arbitrator for the session;

“reconciliation” means any process of alternative dispute resolution applied by the courts to promote reconciliation or conciliation under Part 5;

“rules” means rules made under section 16.

PART 2 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

3. Objectives of this Part – The objectives of this Part are:

- (a) to improve case management in the Courts exercising criminal and civil jurisdiction by

applying alternative dispute resolution under this Act;

- (b) to apply procedures at an appropriate stage before a mediation session, which aim to—
 - (i) clarify the issues involved in each case;
 - (ii) confirm the charges that are to proceed to trial and to alternative dispute resolution;
 - (iii) determine that any alternative dispute resolution procedure under this Act be applied in any appropriate case;
 - (iv) determine the length of the trial, and explore means by which its hearing may be facilitated by the application of any appropriate procedure;
- (c) otherwise enhance the efficiency of the courts in determining criminal and civil proceedings in any just manner.

4. Pre-trial orders – (1) Prior to the trial of any criminal or civil proceeding either party may make application to the court having control of the proceeding for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to:

- (a) compelling the attendance of any witness or the production of any evidence at the trial;
- (b) compelling the provision by the prosecution to the defence of any briefs of evidence, copies of documents or any other matter which should fairly be provided to enable a proper preparation of the defence case;
- (c) a challenge to the use of any report or other evidence that may unfairly prejudice the defence cases;
- (d) a challenge to the validity of the charge, complaint or information as disclosing no offence under the law;
- (e) a challenge to the proceedings on the grounds of the breach of any constitutional right of the accused person, or any applicable human rights issue;

- (f) any matter concerning the giving of an alibi notice and the information to be provided in such a notice; or
- (g) the application of any alternative dispute resolution procedure under this Act.

(2) A court may hear and adjudicate upon an application made under this section at any time that the court determines, or the court may defer the hearing of it until the next pre-trial conference for that matter to be held under the provisions of this Part.

(3) Upon hearing any application under this section the court may make any necessary order to:

- (a) protect the rights of any party to the proceedings;
- (b) facilitate a fair and timely hearing of the proceedings to which the application relates; or
- (c) apply any alternative dispute resolution procedure under this Act.

5. Prescribed procedures and powers – (1) Rules made under this Act may prescribe procedures and powers for courts to conduct pre-trial conferences in criminal and civil proceedings to meet the objectives stated in section 3.

(2) The Rules made under subsection (1) may make provision for:

- (a) the courts in which pre-trial conference may or shall be conducted;
- (b) the powers of court officers to conduct pre-trial conferences, or to perform any role or power in relation to them;
- (c) the stage at which pre-trial conferences may or shall be conducted;
- (d) the requirement for parties to attend, and the powers of the court to enforce the attendance of the parties;
- (e) any aspect of the procedure to be applied during pre-trial conferencing; and
- (f) any other matter related to pre-trial conferences which are consistent with the objectives of this Part.

6. Power of Courts in the absence of rules – (1) Nothing in section 5 prevents a court from adopting and applying procedures for pre-trial conferences as the court sees fit.

(2) The processes adopted under subsection (1) must be aimed at facilitating the attainment of the objectives stated in section 3, and must be modified to meet the requirements of any applicable rules made under this Part when they take effect.

PART 2A 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 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 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 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.

PART 3 MEDIATION PROCEDURES

7. Power of courts to refer parties to mediation – (1) The court may refer parties to a dispute to attend mediation prior to or during the hearing of any civil matter in dispute.

(2) Without limiting subsection (1), the court may refer a matter to mediation if:

- (a) there is considered a possibility of a settlement;
- (b) the parties or party to a proceeding may not be able to meet the costs of the proceedings if it were to proceed; or
- (c) both parties voluntarily agree to mediation.

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

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.

9. Protection from defamation – The same privilege in relation to defamation as exists in relation to judicial proceedings applies to:

- (a) any mediation sessions undertaken under this Act; and
- (b) any documents or other materials—
 - (i) produced at a mediation session; or
 - (ii) given to a mediator for the purpose of arranging or conducting a mediation session.

10. Protection of mediators – A mediator has the same protection and immunity as a judge of the Supreme Court in the exercise in good faith of his or her functions as mediator.

11. Admissibility 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.

12. Parties to sign an agreement – (1) Where the court has referred a matter to mediation under section 7(2)(c), the parties may be ordered to sign or enter into an agreement with each other regarding the payment of costs incurred in mediation before the commencement date of the mediation session.

(2) The agreement made under subsection (1) shall consist of the parties in mediation session agreeing that the settlement reached at the mediation session shall be binding on the parties.

13. Consent orders – A party to any mediation may apply to the Court in which the proceedings have been issued to make consent orders to formalise any settlement or agreement that has been reached by the parties through mediation.

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.

PART 4 ARBITRATION

14. Referral to arbitration – For the purposes of applying alternative dispute resolution procedures the Court may determine that a civil matter be referred to alternative dispute resolution procedures under the Arbitration Act 1976 if it thinks fit.

PART 5 RECONCILIATION

15. Promotion of reconciliation or conciliation – (1) In proceedings relating to an offence to which this Part applies, a court may, with the consent of the complainant, promote reconciliation or conciliation and encourage the settlement of the proceedings in an amicable way in such cases which are:

- (a) substantially of a personal or private nature; and
- (b) not aggravated in degree.

(2) The reconciliation or conciliation of any proceedings under this section may be on terms of payment of compensation or on other terms approved by the court, which may involve:

- (a) the giving of an apology in an appropriate manner;
or
- (b) the giving of a promise or undertaking not to re-offend, or to respect the rights and interests of any victim; or
- (c) mandatory attendance at any counselling or other program aimed at rehabilitation; or
- (d) a promise or undertaking to alter any habits or conduct, such as the consumption of alcohol or the use of drugs.

(3) A court shall only proceed under subsection (2) if it is satisfied that it is in the interests of any aggrieved party to proceed in such a manner, and in any case involving domestic violence, the court shall ensure that the victim of the violence

does not submit to any proceedings being undertaken under this section by reason of pressure being exerted in any form.

(4) Upon proceeding under this section, the court may then:

(a) order the proceedings to be stayed for a specified period of time upon the offender entering into any bond to comply with the terms imposed by the court under subsection (2); or

(b) dismiss the proceedings.

(5) A proper record of every aspect of the outcome of the proceedings is to be made on the court files and in the records of an accused person whose case has been dealt with under the procedures specified in this section.

(6) The procedures under this section may be applied in connection with any procedure of the court which permits the involvement of traditional and community leaders in the determination of appropriate sentences.

(7) Rules may make provision in relation to any aspect of procedures aimed at promoting reconciliation or conciliation under this section, and may prescribe guidelines to be applied by the Courts in such proceedings.

PART 6 MISCELLANEOUS

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.

REVISION NOTES 2008 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2008 – 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement date (being the date of assent)
- (b) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “from time to time” and “without limiting the generality of” deleted
 - (ii) Numbers in words changed to figures
 - (iii) “notwithstanding” changed to “despite” and “in accordance with” to “under”
 - (iv) Paragraphs made to some definitions and sections 4(2) and 6(2).
 - (v) Insertion of Part 2A (sections 6A – 6G), Sections 11A, 13A and 13B in the Arrangement of Provisions.

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the *Alternative Dispute Resolution Amendment Act 2013*, No.18:

- Sections 2, 5, 6, 7, 9, 13 and 15(7) amended;
- New Part IIA (sections 6A to 6G) inserted;
- Sections 8, 11 and 16 replaced;
- New sections 7(3), 11A, 13A and 13B inserted.



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*This Act is administered by
the Ministry of Justice and Courts Administration*
