

ALTERNATIVE DISPUTE RESOLUTION RULES 2022

EXPLANATORY NOTES

The *ADR Rules 2022* came into force on 1 September 2022. They repealed and replaced the *ADR Rules 2010*.

A hard copy of these Rules, which has been published in “the ADR Book”, is available for purchase from the Waigani Court Library. Please contact Mr Johannes Fege on email jfege@pngjudiciary.gov.pg.

JUSTICE CANNINGS
CHAIR, RULES COMMITTEE
17 May 2024

ALTERNATIVE DISPUTE RESOLUTION RULES 2022

I, Chief Sir Gibuma Gibbs Salika GCL KBE CSM OBE, Chief Justice of Papua New Guinea, certify that, pursuant to s 184 (*rules of court*) of the *Constitution* and s 7E (*mediation rules*) of the *National Court Act*, Chapter 38, and all other powers enabling, the following Rules, described as “*Alternative Dispute Resolution Rules 2022*”, have been made by the Judges and shall come into force on a date to be determined by the Chief Justice by notice published in the *National Gazette*.

Dated this 29th day of July 2022

Chief Sir Gibuma Gibbs Salika GCL KBE CSM OBE
Chief Justice of Papua New Guinea

* Editorial note: The date on which the *Alternative Dispute Resolution Rules 2022* shall come into force is 1 September 2022 (as determined by the Chief Justice and published in *National Gazette* No G621 of 8 August 2022).

ALTERNATIVE DISPUTE RESOLUTION RULES 2022

Table of Contents

Long title

ORDER 1 – PRELIMINARY

ORDER 2 – MEDIATION IN PROCEEDINGS

ORDER 3 – ACCREDITATION MECHANISM AND PROCESS

Division 1 – General

Division 2 – Accreditation Process

Division 3 – Practising certificates for Mediators and ADR Practitioners

Division 4 – ADR Committee

Division 5 – Mediator Accrediting

ORDER 4 – CODE OF PROFESSIONAL CONDUCT FOR ADR PRACTITIONERS

Division 1 – Preliminary

Division 2 – Duties and Responsibilities of Mediators

Division 3 – Conducting a Mediation

Division 4 – Termination, Suspension and Conclusion of Mediation

ORDER 5 – DISCIPLINE OF MEDIATORS

ORDER 6 – REFERRALS

ORDER 7 – REVIEW OF ADR RULES

SCHEDULES

Schedule 1 – Requirements for Accreditation of Mediators

Schedule 2 – Forms

Schedule 3 – ADR Service Fees for Mediation

Schedule 4 – Fees for Mediator Practising certificates

Schedule 5 – Complaints Filing Fee

ALTERNATIVE DISPUTE RESOLUTION RULES 2022

Being Rules regulating Alternative Dispute Resolution (ADR) and to—

- (a) establish a system of accreditation, standards and code of conduct for mediators and providers of other forms of ADR for a proper conduct of mediation and other forms of ADR;
- (b) promote integrity and respect for a system of Court-annexed ADR; and
- (c) give effect to the Constitutional imperative to resolve disputes peacefully through consensus.

ORDER 1 — PRELIMINARY

1. Short description and commencement date

These *Alternative Dispute Resolution Rules 2022*, also to be known in short as “*ADR Rules 2022*”, have been made by the Judges and shall come into force on a date to be determined by the Chief Justice by notice published in the *National Gazette*.

2. Repeal of ADR Rules 2010 and saving

These Rules supersede the *ADR Rules 2010* which are hereby repealed but all actions and steps taken under those Rules remain unaffected as if done under these Rules.

3. Interpretation

In these Rules, unless the context otherwise requires:

- (1) all references to:
 - (a) any office or official means the relevant office or officer so recognised in Papua New Guinea;
 - (b) any Rules or the *ADR Rules* means these Rules;
 - (c) one gender includes the other genders; and
 - (d) the singular word includes the plural and vice versa.
- (2) the word or words—

“*accreditation*” means the process of accrediting mediators and other ADR Practitioners;

“*accreditation criteria*” means the requirements for the education, accreditation, and renewal of accreditation of mediators and other ADR Practitioners pursuant to these Rules;

“*Act*” means the *National Court Act* Chapter 38 as amended;

“*ADR*” means forms of alternative dispute resolution which includes mediation,

arbitration, conciliation, expert case appraisal, early neutral evaluation, settlement conferencing, any combination of them and such other forms of dispute resolution that are different from the formal court process and includes any process undertaken to avoid or otherwise minimise prolonged disputes in the future;

“*ADR Practitioner*” means a person who practises any form of ADR other than mediation under these Rules;

“*ADR Service*” means the services provided by the ADR Division of the National Judicial Staff Service;

“*ADR services*” means the provision of all forms of ADR services by ADR Practitioners;

“*advisory*” means an ADR process in which a mediator is able and qualified to give advice to parties in a dispute to enable them to reach an agreement settling their dispute;

“*any other officer*” means any administrative officer within the National Court;

“*Authority*” means the Complaints Authority established under these Rules;

“*arbitration*” means a process which is similar to a court process in which the parties to a dispute appoint a neutral third-party dispute resolution practitioner (the arbitrator) to whom the parties present their evidence and arguments and the arbitrator makes a decision for them which is binding and can be enforced as a court order subject to meeting certain procedural requirements;

“*blended process*” means a form of ADR that combines two or more forms of ADR employed to help resolve a dispute or conflict;

“*Board*” means the Appeals Board established under Order 5 rule 11 of these Rules;

“*Code*” means the Code of Professional Conduct for Mediators contained in Order 4 of these Rules;

“*Committee*” means the ADR Committee established under these Rules;

“*Complaints Handling Authority*” means each of the Complaints Officer, the Authority and the Board;

“*Complaints Officer*” means the person appointed as such under these Rules;

“*conciliation*” means a less formal process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement; the conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role; the conciliator may advise on or determine the process of conciliation whereby resolution may be attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement;

“*Council*” means the Mediator Accrediting Council established under these Rules for the accreditation of mediators and ADR Practitioners under Division 3.5 of these Rules;

“*Court*” means the National Court;

“*customary form of mediation*” means a form of mediation that is based on a customary process which may involve the provision of some wise counsel by the mediator based on experience, knowledge and exposure to the subject matter in dispute between the parties;

“*date of accreditation*” means the date when the Council decides to accredit a mediator or an ADR Practitioner;

“*early neutral evaluation*” means a process in which the parties to a dispute present, at an early stage of their dispute or proceedings in attempting to resolve the dispute, arguments and evidence to a dispute resolution practitioner who makes a determination on the key issues in the dispute and the most effective means of resolving the dispute without determining the facts of the dispute;

“*expert case appraisal*” means a process in which a dispute resolution practitioner (the case appraiser) usually chosen on the basis of their expert knowledge of the subject matter and the process involved, investigates the dispute and provides advice on possible and desirable outcomes and the means whereby these may be achieved;

“*external mediator or an ADR Practitioner*” means a mediator or an ADR Practitioner who is not employed by the Court, the National Judicial Staff Service or the State and who may charge a fee for their ADR services;

“*forms of ADR*” means forms of dispute resolution other than mediation;

“*improper conduct*” means conduct that is in breach of any of these Rules and the duties and responsibilities imposed on mediators under the Code in Order 4 of these Rules;

“*intake*” means those things set out in Order 4 rule 11(2);

“*independent assessor*” means a person who is qualified and experienced as a mediator who is experienced and competent to properly assess and determine the competence of other mediators;

“*internal mediation*” means a mediation process conducted by an internal mediator for a party or parties who do not have the ability to pay the fees of an external mediator;

“*internal mediator*” means a mediator who is within the employ of the Court, the National Judicial Staff Service, the State or an external mediator who is engaged by the Court or the National Judicial Staff Service to conduct internal mediations;

“*internal process*” is a form of ADR arranged by an organisation to resolve a dispute between members of, or persons employed in that organisation;

“*judicial dispute resolution*” means a process a judicial officer uses to assist in a prompt resolution of a dispute by first endeavouring to get the parties to settle their dispute and failing that receive submissions on the matters in dispute on such of the facts as the parties may agree or as may be presented and issue a binding opinion without a full trial or hearing;

“*Judge Administrator ADR*” means the Judge appointed by the Chief Justice to be in charge of the ADR track in the National Court;

“*mediator*” means a neutral third party who is accredited as such and holds a current practising certificate under these Rules and has the necessary expertise who uses the mediation process or a blended process, facilitates and helps parties in a dispute to respectfully communicate with each other and helps them to jointly identify, clarify and explore issues, develop and evaluate options, consider alternative process to settle their dispute and enable them to reach an agreement or make their own decisions about how to move forward and or enhance their communication in a way that addresses their mutual needs and their individual interests with future actions and outcomes for them to reach their own agreement or make a decision based on the principle of self-determination;

“*mediation*” means the process a mediator uses to help the parties in a dispute to jointly identify their disputed issues, develop and evaluate options, and enable them to make their own decisions about how to move forward and or enhance their communication in

a way that addresses their mutual needs and individual interests with future actions and outcomes and reach their own agreement or make a decision based on the principle of self-determination which may include a blended or a customary form of mediation;

“*misconduct*” means conduct that is in breach of any of the duties and obligations imposed upon mediators and other ADR Practitioners by these Rules and their Codes;

“*meritorious issue*” means an issue that has merit and not previously the subject of any judicial determination in Papua New Guinea and raises the kinds of issues listed in Order 2 rule 2(3)(b)(i) to (x);

“*National Judicial Staff Service*” means the National Judicial Staff Service established by the *National Judicial Staff Service Act 1987*;

“*NJSS*” means the National Judicial Staff Service;

“*Originating Summons*” means the mode of commencement of proceedings as provided for under Division 4.4 of the *National Court Rules*;

“*practising certificate*” means a mediator practising certificate or a form of ADR Practitioner practising certificate;

“*Practitioner*” means a person who is trained in Papua New Guinea or elsewhere and accredited under these Rules as a mediator, an arbitrator, an appraiser, an evaluator, a conciliator or a person who practises any combination of forms of ADR;

“*participants*” includes mediators, parties and all other persons present and participating in a mediation process;

“*party or parties*” means the parties to any proceedings in Court or a dispute;

“*providers of other forms of ADR*” means providers of forms of ADR other than mediators and includes arbitrators, conciliators, expert case appraisers, early neutral evaluators or any combination of them and such other forms of dispute resolution providers that are different from the formal court process and mediation but includes any other process that avoids or otherwise minimises prolonged disputes;

“*publication*” means a book, pamphlet, brochure, business card, website, newspaper, magazine, periodical, journal, gazette, directory or other printed or electronically published material;

“*Register*” means the Register of Accredited Mediators kept by the Registrar;

“*Registrar*” means the Registrar of the National Court of Justice;

“*Rules*” means these Rules;

“*settlement conferencing*” means a process after commencement of suit in which the parties voluntarily or at the direction of a judge consult with a judge or referee who assists the parties to evaluate the strengths and weaknesses of their respective positions and provides advice on possible and desirable outcomes and the means of achieving them with a view to the parties concluding a settlement of their dispute;

“*the proceeding*” means the proceeding or proceedings out of which mediation or another form of ADR has been ordered;

“*Schedule*” means a Schedule to these Rules;

“*State*” means the Independent State of Papua New Guinea and entities and bodies that are funded and or controlled by the State.

ORDER 2 — MEDIATION IN PROCEEDINGS**1. Application of this order**

This Order applies to mediation only.

2. Exhaustion of or dispensation with mediation

- (1) Subject to subrule (2), after the commencement of these Rules no further step may be taken in any proceedings after:
 - (a) the filing of the Defence;
 - (b) expiry of the time for filing of the Defence; or
 - (c) the first appearance in Court.
- (2) Unless one of the parties applies for and has been granted leave to dispense with the requirement for mediation, the proceeding may proceed to mediation, for which purpose the Court may issue appropriate orders under Order 2 rule 3 whether or not a formal application for mediation has been filed and moved.
- (3) An application for leave under subrules (1) and (2) shall be by motion supported by:
 - (a) an affidavit from a person who has direct knowledge of the relevant facts of the case and who is able to demonstrate why the case should not be referred to mediation; and
 - (b) where a party is legally represented, an affidavit from the lawyer having carriage of the matter deposing with the support of appropriate evidence that they have discharged their duties under rule 8(7) of the *Professional Conduct Rules* 1989 (or any rule enacted in substitution thereof) for lawyers and that the case falls under one or more of the following categories:
 - (i) there are legal issues that have not previously been determined by a Court in Papua New Guinea; or
 - (ii) an out-of-court settlement is not in the interest of National security; or
 - (iii) there is no reasonable cause of action; or
 - (iv) a case warranting immediate declaratory relief where the facts are not contested; or
 - (v) a case involving a history of violence; or
 - (vi) a case where a Court sanction or order is statutorily required; or
 - (vii) one or more of the parties are in a state of mind that renders them incapable of negotiating for themselves or others; or

- (viii) there is a real dispute over the meaning and application of a particular provision in a contract or an instrument; or
 - (ix) a public sanction as in a criminal case or other case is required for public health, safety and good order; and
 - (x) subject to subrule (4), there is:
 - (A) a preliminary issue such as a question on jurisdiction, a condition precedent or a statutory time bar; or
 - (B) an immediate protective order such as an injunction is required.
- (4) Where subrule (3)(b)(x)(A) or (B) applies, the substantive matter shall be referred for resolution by mediation unless a question of the kind referred to in subrule (3)(b)(i) to (ix) is presented.
- (5) Subject to subrules (6) and (7), on the hearing of an application for leave, the Court may make any one or more of the following orders:
- (a) grant leave to proceed in the trial track; or
 - (b) dispense with the requirements of subrule (6)(b); or
 - (c) order that the matter be mediated and a mediator appointed in accordance with subrule (3)(b)(i) to (x) respectively.
- (6) Leave may not be granted under subrule (2) unless:
- (a) the parties establish to the Court's satisfaction that a meritorious issue raising the kinds of issues listed in subrule 2(3)(b)(i) to (x) exists; and
 - (b) the applicant for leave establishes to the satisfaction of the Court that it has made real and good faith effort to resolve the dispute either by direct negotiations or through a prior mediation.
- (7) In determining whether to order mediation and the appointment of a mediator or to dispense with the requirement for mediation, the Court shall take into account the matters set out in subrule (3)(b)(i) to (x).

3. Ordering mediation

- (1) Where parties wish to have their dispute or any issue between them resolved by mediation, they may agree to participate in a mediation for a resolution of their dispute or issues presented and seek appropriate orders for mediation by:
- (a) filing proceedings seeking an order for mediation and appropriate orders and directions if no proceeding has already been filed; or
 - (b) notice of motion where proceedings have already been issued.

- (2) Any application under subrule (1) shall be supported by an affidavit from a person who has direct knowledge of the relevant facts of the case and the need for resolution by mediation.
- (3) Subject to the provisions of this Rule, the Court shall on the request of all parties to a proceeding or on the application of any party to a proceeding or on its own motion order mediation for a resolution of all or parts of the proceeding or failing settlement:
 - (a) an identification and limiting of the real and meritorious issues in the proceeding;
 - (b) preparing the parties for an expedited judicial dispute resolution if they so consent; or
 - (c) enabling the parties to reach consensus on how to conduct the litigation expeditiously.
- (4) At the time of considering whether to order mediation, the Court may have regard to the following factors:
 - (a) whether the proceedings raise issues of the kind set out in Order 2 rule 2(3)(b)(i) to (x);
 - (b) whether the mediation will result in prejudice to the rights of any of the parties;
 - (c) the nature of the relief sought and the suitability of a mediated result;
 - (d) the timing of the mediation by reference to the history of the case, status of the pleadings, discovery, when trial is likely and the length and costs of trial;
 - (e) the location of the dispute and the parties;
 - (f) such other factors as the Court considers appropriate.
- (5) If the Court decides to make an order for mediation it may:
 - (a) incorporate in its order the matters specified in s 7B(4) of the Act and make an order in terms similar to Form 1A, Form 1B or Form 1C in Schedule 2; or
 - (b) make a preliminary order similar to Form 1D in Schedule 2 directing the parties to consider all the provisions that should be made in an order for mediation and return with a draft for its consideration and endorsement at a later time.
- (6) Where the matter involves groups of people as in representative actions or customary land-owning groups or benefits derived therefrom, the mediation order may include a provision for the mediation to take place at a venue where the majority of those groups of people are located and can attend.

- (7) Where there are two or more related proceedings, an order for mediation in one matter may include all other related proceedings, unless the Court otherwise specifically excludes anyone or more of the related proceedings from being included in a mediation order and all matters being mediated.
- (8) If the mediation does not fully resolve the proceeding, the parties shall together with the assistance of the mediator:
- (a) identify what meritorious legal issues of the type listed in Order 2 rule 2(3)(b)(i) to (x), if any, are presented;
 - (b) if an issue other than the type listed in Order 2 rule 2(3)(b)(i) to (x) is presented, demonstrate how and why such an issue is beyond resolution by mediation;
 - (c) confirm that such issues, after reasonable enquiry having been made by the parties and the mediator, are not issues which have already been determined by any Court in Papua New Guinea and demonstrate how the issues cannot be resolved by reference to other case authorities that might be on point; and
 - (d) agree and settle the relevant facts upon which such issues are presented, after which the mediator shall file with the Court an appropriate certificate similar to Form 2B or 2C in Schedule 2 and shall otherwise comply with the requirements of Order 2 rule 9(6).

4. Effect of a mediation order

- (1) Subject to subrule (2), an order for mediation is an interlocutory order and does not determine finally any issue in the proceeding and as such:
- (a) it shall not be stayed or varied by any court except by the referring judge with the consent of all parties;
 - (b) the Court may on its own motion or on the application of a party issue such orders or directions as are necessary to enable the parties to comply with the order;
 - (c) it does not stay the steps the parties need to take to expedite the matter to trial should mediation result in no settlement.
- (2) All parties and their lawyers shall take all steps necessary to enable a mediation once ordered to take place without delay, use their best efforts through the mediation process to resolve matters in dispute and refrain from taking any step in or out of Court that will delay a prompt commencement and conclusion of the mediation process.
- (3) A mediation order does not preclude a mediator from referring to the Court any serious legal or procedural issue identified during a mediation process which in the mediator's view cannot be resolved by mediation.

- (4) Where a mediator refers an issue under subrule (3), the issue must be stated with the relevant facts settled and agreed to by the parties with the assistance of the mediator.

5. Appointment of mediators

- (1) For the purpose of a mediation ordered under Order 2 rule 3 and subject to this Rule, the Court may on its own motion or on the application of all or any of the parties to the proceeding appoint a mediator.
- (2) Where the Court appoints a mediator, it may be guided by any agreement of the parties as to their preferred mediator.
- (3) Subject to subrules (4) and (5), where any party wishes to have the mediation conducted by an internal mediator, the Court may appoint an internal mediator where one is available or failing such availability, appoint an external mediator to conduct the mediation as an internal mediator.
- (4) No appointment shall be made under subrule (3) unless the Court is satisfied that one or all the parties in the proceeding is or are impecunious or it is in the national interest.
- (5) For the purposes of subrules (3) and (4), the party seeking the appointment of an internal mediator shall provide comprehensive evidence of their financial position, including their sources of income and assets held by them or in which they hold an interest and all liabilities.
- (6) Provided the presiding Judge is fully accredited as a mediator under these Rules, the presiding Judge may appoint himself or herself as the internal mediator and conduct the mediation.
- (7) Where a mediation conducted by a Judge does not result in a settlement, the provisions of s 7D(4) of the Act shall apply without limiting the:
 - (a) Judge's powers to make such orders and issue such directions as are necessary to have the proceeding progressed to trial expeditiously before a different Judge; and or
 - (b) parties' right to allow by their consent for the Judge to preside and make a binding decision for them on all or parts of the unresolved issues.
- (8) The Court may revoke or vary an order for the appointment of a mediator at any time before the conclusion of the mediation on application by a party or the Court of its own motion if the Court is satisfied that the purpose of the mediation order will not be served at all or that the mediation will not be completed within a reasonable time or that the mediation will result in unreasonable cost to the parties.

6. ADR Service processing fee

- (1) Subject to subrules (3) and (4) and unless the Court otherwise orders, all parties shall pay an ADR Service processing fee in equal shares for a proceeding ordered to mediation under these Rules as prescribed in Schedule 3, which shall be paid in the manner required by subrule (2).
- (2) Each party shall prior to the commencement of the mediation pay to consolidated revenue for the credit of the ADR Service their share of the applicable prescribed fee and provide proof of payment of such fee to the Assistant Registrar ADR no later than seven days from the date of the mediation order.
- (3) Where a proceeding has more than two parties, only the parties who have been correctly named and are actively participating in the conduct of the proceeding and the mediation shall pay the ADR Service processing fee under this Rule.
- (4) The State is exempt from paying the ADR Service processing fee.

7. Mediator's fees and costs

- (1) External mediators are entitled to charge reasonable fees and outgoings for their services having regard to:
 - (a) the complexity of the matter, the time and skill(s) involved;
 - (b) any scale of costs that might be applicable; and
 - (c) the standing and experience of the mediator.
- (2) Subject to subrule (3), all the parties in the proceeding referred to external mediation shall pay the external mediator's fees and outgoings which may be apportioned equally between the parties or as they may agree or as the Court may direct.
- (3) Where a proceeding has more than two parties, only the parties who have been correctly named and are actively participating in the conduct of the proceeding and the mediation shall pay their share of the external mediator's fees and outgoings payable under this Rule.
- (4) At the commencement of an external mediation process, the mediator shall make the following matters clear to the parties:
 - (a) how the mediator's fees and outgoings are calculated and charged;
 - (b) the mediation process, its usefulness and any related costs; and
 - (c) the parties' joint responsibility to meet the costs.
- (5) Subject to subrule (8), an external mediator shall obtain agreement from the participants as to the fees and outgoings of the mediator and the costs of the mediation process, how they will be shared, when and how they become payable and the method of payment.

- (6) An agreement on an external mediator's fees and outgoings and the costs of the mediation process shall be incorporated in a written agreement or written arrangement to enter into mediation.
- (7) The amounts due and payable under a fee agreement or fee arrangement shall become a debt due to the mediator and may be enforced in the event of non-payment as a liquidated debt using the process provided for under Order 2 rule 13.
- (8) External mediators shall not base their own fees on the outcome of the mediation but they may act *pro bono* or leave to the discretion of the parties the payment of any fees unless the Court otherwise orders.
- (9) Where an external mediator's fees and outgoings have been collected in respect of a mediation process that is terminated, so much of the fees as are unearned and the outgoings unused shall be returned promptly to the person who paid them, subject to a deduction for reasonable administration costs, which may include the mediator's time committed to the mediation process.
- (10) Mediators shall not during their practice:
 - (a) give or agree to give an allowance in the nature of an introduction fee or spotter's fee to any person for introducing professional business to them; or
 - (b) receive or agree to receive any allowance referred to in paragraph (a) of this subrule from any person for introducing or recommending clients to that person.
- (11) Subject to any order of the Court and Order 2 rule 5(4), where an impecunious party is entitled to receive a monetary settlement in consequence of a mediation conducted by an internal mediator, the first obligation of that party shall be to pay a mediator's fees at the highest reasonable fee charged by an external mediator for a comparable mediation, which shall be payable to Consolidated Revenue.
- (12) Where an internal mediator is appointed to mediate in a national interest case, a mediator's fee shall, if the Court so orders, be the sum of K5,000.00 per day or such other amount as the Court may order which shall be paid to Consolidated Revenue.
- (13) Where an internal mediation is required and is conducted outside an internal mediator's usual place of abode and the employer of that mediator or the NJSS is not meeting that mediator's expenses, the mediator shall be entitled to and the parties shall pay the mediator's travel, accommodation and other expenses and allowances at the applicable Public Service rate or as may be determined by the parties provided such expenses do not equal or exceed the expenses which would be reasonably claimable by an external mediator of similar experience and competence.
- (14) Upon full payment of the fees and expenses payable under any of the preceding subrules, the mediation conference shall commence on the date nominated in the

mediation order.

- (15) Subject to subrule (16), where the State is a party to a mediation conducted by an external mediator, the parties shall discuss, agree and pay the mediator's fees in accordance with the parties' agreement.
- (16) For the purposes of subrule (15), the State does not include any State-owned enterprise in which the State owns an asset or in which any of the share capital is owned by the State or which otherwise engages in commercial activity and includes subsidiaries of those enterprises.

8. Immunity of mediators

Without affecting the operation of the provisions of Order 5 (*discipline of mediators*) of these Rules, a mediator who conducts mediation in accordance with these Rules has the same protection and immunity as a Judge performing judicial duties and functions.

9. Mediation process

- (1) Within five business days of receiving notification of appointment pursuant to Order 2 rule 3, a mediator must either decline the appointment, or accept the appointment and notify the parties in writing.
- (2) Unless the Court otherwise directs, the parties and the mediator must conduct the mediation with the object, so far as practicable, of completing the mediation within two calendar months from the date of the appointment of the mediator.
- (3) The mediation shall commence with the first contact between the mediator and any one of the parties and shall include all communications between the mediator and any of the participants in the mediation.
- (4) A mediator may at any stage of the mediation process issue such directions to the parties as may be necessary for the effective conduct and prompt conclusion of the mediation, including directions for referral to the Court of any issue or question of law which in the opinion of the mediator requires judicial determination before any further step can be taken in the mediation process.
- (5) Where it is clear that the mediation process will not conclude by the due date, the mediator and the parties shall provide progress reports in Form 2 of Schedule 2 to the Court and the ADR Service prior to the expiry of the date fixed for the return of the mediation orders.
- (6) Where the parties reach a mediated agreement, the mediator shall with the assistance of the parties' lawyers if any, ensure that the agreement is reduced into writing and signed and dated by the parties.
- (7) Subject to subrule (6), the mediator shall file with the Court a certificate similar to Form 3A, Form 3B, Form 3C or Form 3D of Schedule 2 within three business days of the completion of the mediation or before the matter returns to Court.
- (8) Where the proceeding is fully or partially resolved, the filing of a certificate in Form 3A or Form 3B under subrule (7) shall be accompanied by copies of:

- (a) the signed mediated agreement referred to in subrule (6) unless the parties mutually agree in writing that the terms of settlement should remain confidential; and
- (b) a draft order by consent for endorsement or consideration by the Court.

10. Parties' duties

- (1) Subject to any directions from the Court or the mediator, each party shall take such steps as may be necessary to ensure that the mediation conference occurs as soon as possible and shall refrain from taking or failing to take any step that would delay the mediation process from commencing promptly and concluding within the time set by these Rules or by the Court.
- (2) Each party must participate in good faith in the mediation and not impede the mediator in conducting and completing the mediation process within the time set by these Rules or by the Court.
- (3) As the purpose of mediation is to resolve disputes, the parties shall focus on finding a solution to their dispute and shall refrain from engaging in legal debates or arguments.
- (4) Unless the Court or the mediator otherwise directs, a mediation session shall be attended by each party or if a party is a corporation then by an officer of the corporation having full authority to settle the proceeding.
- (5) If the conduct of the proceeding is controlled by an insurer, an officer of the insurer having full authority to settle the proceeding shall attend each mediation session.
- (6) A person who is required by these Rules to attend a mediation session must attend in person unless granted leave by the Court or the mediator to attend by telephone, video link, or other form of telecommunication in consultation with the other party or parties.
- (7) Where a person represents or purports to represent a group of litigants or acting on the instructions and or authority of a group of people or is a member of such a group and fails to:
 - (a) attend mediation after having had due notice of the mediation; or
 - (b) participate in the mediation in good faith either by walking out of the mediation or by taking such other steps that impede or otherwise unnecessarily delays or affects the smooth conduct and conclusion of the mediation process,

the group may if they so choose, proceed with the mediation and any agreement reached at the mediation shall be binding on the absent representatives or persons.
- (8) A party may be accompanied by that party's lawyer or legal representative at

any mediation session and such other persons as the mediator and the other parties may approve.

- (9) Each lawyer or legal representative who attends a mediation must:
- (a) act in good faith regarding the conduct of the mediation and not do anything to impede, inhibit, or delay the commencement and completion of the mediation;
 - (b) prepare adequately for a mediation and ensure they are aware of all relevant legislative provisions and case law or decisions that relate to the issue in dispute with their client and the other party or parties as well as the law on mediation;
 - (c) provide competent legal advice to their client before, during and or after the course of the mediation;
 - (d) discharge their obligations under the *Professional Conduct Rules* and the *Lawyers Act*, especially as regards settlement of matters;
 - (e) engage in a meaningful way with all other participants attending the mediation and their lawyers or legal representatives to settle the matter fully; and
 - (f) use their best endeavours to collaborate with the other party or parties and their lawyers or legal representatives to produce a settlement agreement facilitated by the mediator.
- (10) A lawyer who represents a party and does not attend and meaningfully participate in a mediation process is precluded from providing any advice that operates against a mediated agreement or proposed mediated agreement

11. Bad faith

- (1) Where a party fails to discharge any of that party's duties under Order 2 rule 10, the mediator may issue a bad faith certificate in Form 3D of Schedule 2 and a copy of the certificate shall be furnished by the mediator to all parties.
- (2) Subject to subrule (3), where the Court is satisfied that a party has not participated in good faith in the mediation or has impeded the mediation or has otherwise failed to meet that party's obligations under a mediation order or agreement, the Court may order:
 - (a) the dismissal of the proceeding; or
 - (b) the striking out of a defence and enter judgment; or
 - (c) the striking out of a defence to a cross-claim and enter judgment for a plaintiff or cross-claimant; or
 - (d) that any claim for relief by the defaulting party is stayed until further order;
 - (e) costs on an indemnity or lawyer and client basis; and or

- (f) make such further or other orders as it may consider appropriate in the circumstances and in the proceeding.
- (3) The Court shall not make an order under subrule (2)(a) to (e) unless the Court has heard the parties as to why any of those heads of relief should not be granted.

12. Confidentiality

- (1) All participants in a mediation are subject to a duty of confidentiality and shall not, without the consent of all parties to the proceeding, disclose to any person not a party to the proceeding the nature or effect of any discussions and any documents produced during the mediation that are not otherwise discoverable.
- (2) Nothing said, or the nature or effect of any documents produced, during discussions during the mediation between the mediator and any participant in the absence of any one or more of the parties shall be disclosed directly or indirectly by any participant to the absent parties without the consent of all participants in those discussions.
- (3) The provisions of subrules (1) and (2) do not apply to instances of:
 - (a) non-attendance of a party at mediation;
 - (b) non-compliance with orders or directions of the Court or directions of the mediator;
 - (c) failure to meet any of the requirements of these Rules;
 - (d) a refusal by a party to sign a record of a mediated result or a mediated agreement;
 - (e) a report by the mediator compiled with the assistance of the parties regarding issues remaining for determination;
 - (f) a party taking a position that is contrary to established legal principles or contrary to the established facts of the case; and
 - (g) any disclosure under Order 2 rule 3(8) or disclosure by consent under subrule 12(1).

13. Enforcement

- (1) Subject to subrule (3) an agreement reached during mediation shall have the same force and effect and may be enforced in the same manner as if it were an agreement or contract reached in the ordinary course of business or conduct of parties except only for:
 - (a) a lack of an essential element for the existence of a legally binding and enforceable contract; or
 - (b) where legislation specifically prohibits the parties from negotiating and

resolving the subject of their dispute.

- (2) Subject to subrule (3) and any prevailing custom, where a mediation involves a group or groups of people dealing with the collective interests of the group or groups, an agreement by the majority of the members of the group or groups shall be binding on all members and any such agreement shall be enforced notwithstanding any dispute by an individual member.
- (3) Where the dispute involves customary land, the agreement shall not be binding unless the majority includes persons who have the right to make decisions according to the relevant custom.
- (4) Any party to a mediation conducted by a mediator may apply to the Court for an order endorsing or giving effect to an agreement reached during the mediation by:
 - (a) notice of motion if the proceeding is current; or
 - (b) originating summons if the proceeding has been concluded.
- (5) For the purposes of subrule (4), the applicant shall file an affidavit deposing to the relevant facts giving rise to the application, which may include a copy of the mediated agreement (if any) or other information evidencing the agreement.
- (6) In considering and determining an application under subrule (3) where a question of enforcement or opting out of a mediated agreement arises, the paramount duty of the Court shall be to have regard to the provisions of subrule (1) and to always seek to uphold the agreement of the parties.

14. Admissibility

Subject to Order 2 rule 13(3), no evidence shall be admitted in the proceeding, the subject of a mediation, or any other proceeding of anything said or done by any person at the mediation except only with the prior informed consent of all the parties attending mediation where a mediation has been conducted:

- (a) in accordance with Order 2 rule 9; or
- (b) by an accredited mediator prior to commencement of a proceeding.

ORDER 3 — ACCREDITATION MECHANISM AND PROCESS***Division 1 – General*****1. Holding out and practising as a mediator or ADR practitioner**

- (1) No person shall hold themselves out as a mediator or ADR Practitioner unless accredited as such under these Rules.
- (2) A person may be accredited as a mediator if that person meets the accreditation criteria set out in Schedule 1 pursuant to Order 3 rule 28(2) of these Rules or such other requirements as the Council considers appropriate from time to time.
- (3) For accreditation as an ADR Practitioner, the Council through the Committee shall develop the relevant criteria for accreditation and until such criteria is developed, the Council may use the relevant criteria applicable internationally for the particular form of ADR applied for.

Division 2 – Accreditation Process**2. Establishment of the accreditation system**

For the purposes of accrediting mediators and ADR Practitioners, there is established a system of accreditation by which the Council receives and determines all applications for accreditation.

3. Qualification for accreditation

- (1) Persons shall be qualified for accreditation (including renewal of accreditation) as a mediator or as an ADR Practitioner if they:
 - (a) are fit and proper persons to be accredited as a mediator or an ADR Practitioner as provided for in these Rules; and
 - (b) meet the accreditation criteria as determined by the Council in accordance with these Rules.
- (2) The Council may in its discretion upon reasonable cause being shown by an applicant dispense with any of the requirements in subrule (1)(b) for qualification for accreditation as a mediator or an ADR Practitioner.

4. Fit and proper person

- (1) In determining whether an applicant is a fit and proper person to be accredited as a mediator or an ADR Practitioner, regard shall be had to the applicant's:
 - (a) probity;
 - (b) competence and soundness of judgment for fulfilling the responsibilities as a mediator;

- (c) diligence with which the applicant is fulfilling or likely to fulfil those responsibilities;
 - (d) record of any convictions or charges pending whether criminal, administrative or other misconduct;
 - (e) experience if any, within a system of dispute or conflict resolution;
 - (f) knowledge of the applicable laws, rules and regulations regarding the particular form of ADR accreditation applied for;
 - (g) engagement in any business practices appearing to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on their conduct; and
 - (h) such matters and evidence as may be relevant and obtained from any source.
- (2) Further regard shall be had to:
- (a) the applicant's history of physical or mental health or behavioural problems; and
 - (b) whether the interests of mediators or ADR Practitioners are, or are likely to be, in any way threatened or compromised.

5. Application for accreditation

- (1) Subject to subrule (2), a person may apply to the Committee established under Order 3 rule 14 for recommendation to the Council for accreditation as a mediator or an ADR Practitioner by lodging an application with the Committee.
- (2) All applications shall clearly specify the form of ADR for which accreditation is sought and shall be supported by:
 - (a) evidence demonstrating that the applicant is a fit and proper person in accordance with these Rules;
 - (b) evidence demonstrating satisfaction of the accreditation criteria relevant to the form of ADR for which accreditation is sought; and
 - (c) a detailed curriculum vitae and relevant professional and character references;
 - (d) such other documentation as the Committee may from time to time require.

6. Accreditation

- (1) The Council may on the recommendation of the Committee decide to accredit a person applying for accreditation if the applicant shows to the satisfaction of the

Council that the applicant possesses the required qualifications of Order 3 rule 3.

- (2) In considering an application for accreditation as a mediator or an ADR Practitioner, the Council may waive any or all the qualification requirements of Order 3 rule 3(1)(b).

7. Certificate of accreditation

Where the Council decides to accredit a person as a mediator or an ADR Practitioner:

- (a) the accreditation shall be in respect of mediation or such form of ADR and subject to such conditions and restrictions as the Council may think appropriate, including restricted accreditation; and
- (b) the Council shall issue an appropriate certificate of accreditation signed by the Chair or in the absence of the Chair signed by the member who chaired the relevant Council meeting at which accreditation of the person was decided.

8. Register of accredited mediators and ADR practitioners

- (1) The Registrar shall keep in accordance with Form 4 in Schedule 2 a Register of mediators and ADR Practitioners accredited by the Council under Order 3 rule 6.
- (2) A person accredited as a mediator or an ADR Practitioner by the Council shall sign the Register.

9. Deregistration of accredited mediators

- (1) The Council may suspend, vary or revoke the accreditation of a mediator or an ADR Practitioner for one or more of the following reasons:
- (a) misconduct as a mediator or an ADR Practitioner;
- (b) where the mediator or ADR Practitioner has acted in a manner likely to bring mediation or the relevant form of ADR into disrepute;
- (c) failure by the mediator or ADR Practitioner to renew his practising certificate for two years after the expiry of his last practising certificate.
- (2) Where the Council has decided to revoke the accreditation of a mediator or ADR Practitioner, the Registrar shall remove the name of the mediator or ADR Practitioner from the Register.

Division 3 – Practising Certificates for Mediators and ADR Practitioners

10. Requirement for mediator and ADR practitioner to hold a practising certificate

A person shall not practise as an accredited mediator or ADR Practitioner unless:

- (a) that person has signed the Register; and

- (b) that person is the holder of a current restricted or unrestricted mediator or ADR Practitioner practising certificate.

11. Practising certificates for mediators and ADR practitioners

- (1) The Committee shall, in accordance with the provisions of these Rules, direct the Registrar to issue to an accredited mediator or an accredited ADR Practitioner who has signed the Register and paid the fee prescribed in Schedule 4 a practising certificate which shall be:
 - (a) an unrestricted practising certificate; or
 - (b) a restricted practising certificate.
- (2) A practising certificate issued under subrule (1)(a) or (b) shall:
 - (a) be in Form 5A of Schedule 2 for an unrestricted practising certificate; or
 - (b) be in Form 5B in Schedule 2 for a restricted practising certificate; and
 - (c) be valid for a period not exceeding two years; and
 - (d) expire on 31 December in the second year following the year in which it is issued.
- (3) An unrestricted practising certificate issued under subrule (1)(a) entitles the holder to practise as an accredited mediator or an accredited ADR Practitioner in accordance with these Rules.
- (4) Subject to these Rules, a restricted practising certificate issued under subrule 1(b) entitles the holder to practise only under the supervision of a holder of an unrestricted practising certificate.

12. Application for practising certificate

- (1) Subject to subrule (2), an application for a practising certificate shall be in Form 6 of Schedule 2 addressed to the Chair of the ADR Committee and shall be accompanied by the fee prescribed in Schedule 4 unless exempted under subrule (3).
- (2) The fee referred to in subrule (1) shall be paid to consolidated revenue for the credit of the ADR Service and proof of payment of the fee shall accompany the applicant's application for a practising certificate.
- (3) Internal mediators and ADR Practitioners employed by the Court, the NJSS or the State who will not be charging a fee for the provision of their services are exempt from the requirement for payment of the prescribed fee referred to in subrule (1).

- (4) The Chair of the ADR Committee shall table an application received under subrule (1) at the Committee's next appropriate meeting following the receipt of the application.
- (5) The Committee shall deliberate upon the application for a practising certificate and decide whether or not to grant the application.

13. Practise as a mediator or ADR practitioner

- (1) The right to practise is conditional on compliance with such requirements as the Committee determines from time to time in addition to a mediator or ADR Practitioner:
 - (a) meeting the Code of Professional Conduct for Mediators or the relevant Code of Professional Conduct for an ADR Practitioner as provided for under Order 4 of these Rules; and
 - (b) completing at least five mediations or a form of ADR in the two-year period prior to any renewal of the practising certificate; and
 - (c) participating in at least one mediator or other forms of ADR educational program such as an ADR or mediation conference, workshop or training program for mediators and or other ADR Practitioners in the two year period prior to any renewal of the mediator's or other forms of ADR practitioner's certificate.
- (2) The holder of a restricted mediator or a form of ADR practising certificate may be granted an unrestricted practising certificate or the relevant form of ADR practising certificate by the Committee provided the holder of such a certificate:
 - (a) has conducted a minimum of five co-mediations, or a form of ADR with at least one of those being conducted by him as the lead mediator or the applicable form of ADR facilitator; and
 - (b) is supported and endorsed by the holder of an unrestricted mediator or the relevant form of ADR practising certificate with whom the holder of the restricted practising certificate has conducted co-mediations or co-facilitated the relevant form of ADR.

Division 4 – ADR Committee

14. Establishment of the ADR Committee

An ADR Committee is hereby established.

15. Membership of the Committee

- (1) The Committee shall consist of:
 - (a) at least three Judges appointed by the Chief Justice, one of whom shall be the Judge Administrator ADR who shall be the Chair of the Committee;

- (b) the Chief Magistrate or the Chief Magistrate's nominee, Deputy Chief Magistrate-Lands and Deputy Chief Magistrate-Judicial;
 - (c) the Dean of the Law School of the University of Papua New Guinea or the Dean's nominee;
 - (d) the Director of the Legal Training Institute or the Director's nominee;
 - (e) the President of the Law Society or the President's nominee;
 - (f) the Solicitor-General or the Solicitor-General's nominee;
 - (g) the Secretary for the Department of Justice and Attorney-General or the Secretary's nominee;
 - (h) one person representing mediators and ADR Practitioners in the public sector appointed by the Chief Justice;
 - (i) one person representing mediators and ADR Practitioners in the private or non-government sector appointed by the Chief Justice; and
 - (j) one person representing the public sector and one person representing the private sector, each appointed by the Chair of the Committee in consultation with the other members of the Committee.
- (2) Appointments under subrule (1)(h) and (i) shall be in consultation with the relevant professional body or organisation if any or in the absence of such an organisation in consultation with the Chair of the Committee.
 - (3) Any vacancies in the membership of the Committee shall be resolved by the relevant appointing authority within one month of the vacancy, failing which the Chair in consultation with the Committee shall make an appointment to fill the vacancy.
 - (4) Where the Committee considers it appropriate, the Committee may, by absolute majority vote, appoint as members of the Committee not more than two other persons who have a particular skill, knowledge and/or experience who are willing to assist the Committee in carrying out its functions.

16. Loss of membership

- (1) A member of the Committee other than a person who is a member by virtue of office who fails to attend three consecutive meetings of the Committee without excuse for absence satisfactory to the Chair, ceases to be a member of the Committee and the Committee shall request the relevant appointing or nominating authority to appoint or nominate another person to replace that member.
- (2) Subject to subrule (3), the term of a person's nomination or appointment shall not exceed three years, but that person shall be eligible for reappointment or renomination.

- (3) Where a person's term referred to in subrule (2) has expired and those responsible for making an appointment or nomination have not done so, that person will continue as a member of the Committee until a new appointment or new nomination is made.

17. Service of documents

Service upon the Committee of any order, notice or other document, shall be at the office of the ADR Service and shall be executed by hand delivery with proper receipt of delivery signed by the Secretary of the Committee or the nominee of the Secretary or by delivering it by electronic transmission with generated confirmation of successful transmission to the Secretary or the nominee of the Secretary.

18. Functions of the Committee

The functions of the Committee are to:

- (a) promote the interest of the public and the interest of the Mediators and other ADR Practitioners in relation to mediation and other forms of ADR in a manner that is fair and just to all and generally to promote and uphold good and acceptable standards of practice in all forms of ADR;
- (b) promote and encourage proper conduct by Mediators and other ADR Practitioners;
- (c) suppress illegal, dishonourable, improper and unprofessional practices and conduct by Mediators and other ADR Practitioners;
- (d) preserve and maintain the integrity and status of Mediators and other ADR Practitioners;
- (e) promote opportunities for the acquisition and diffusion of knowledge of the law and the proper practice of all forms of ADR;
- (f) package and deliver or sanction the packaging and delivery of trainings, conferences, workshops and such other educational programs with a view to promoting proper conduct of Mediators and other ADR Practitioners;
- (g) initiate or contribute to the promotion, development and reform of the laws concerning all forms of ADR for the better conduct and provision of all forms of ADR services;
- (h) provide a means for the amicable settlement of professional differences and disputes between Mediators and other ADR Practitioners;
- (i) provide advice to the Council as requested from time to time; and
- (j) have such other functions as are conferred upon it by the Chief Justice, by this instrument, the Act as amended or any other law.

19. Powers of the Committee

The Committee has all powers necessary to perform and carry out its functions.

20. Meetings of the Committee

- (1) The Committee shall meet at such times, places and days as the Chair determines in consultation with the members of the Committee for the efficient conduct of the Committee's meetings.
- (2) Five members of the Committee which includes the Chair shall constitute a quorum.
- (3) The Chair of the Committee shall preside at meetings of the Committee and:
 - (a) all matters shall be decided by a majority of the votes of the members present and voting; and
 - (b) the Chair has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.
- (4) Minutes of each meeting of the Committee shall be—
 - (a) kept by the Secretary;
 - (b) confirmed by the Committee at its next meeting or soon thereafter as is practicable; and
 - (c) signed by the Chair of the Committee.
- (5) In the absence of the Chair at a scheduled meeting of the Committee, those members present shall elect a member who is a Judge who shall act as Chair of the Committee for the duration of the meeting.
- (6) From time to time, the Chair may appoint a member of the Committee to chair the whole or any part of a meeting whether or not he is present.

21. Protection of the Committee

No act done, or proceedings taken under these Rules shall be questioned on the ground:

- (a) of the existence of any vacancy in the membership of the Committee or any defect in the composition of the membership of the Committee; or
- (b) of any omission, defect or irregularity not affecting the substantive merits of the case.

22. Protection of Committee members

No action, suit, prosecution or other proceedings shall be brought or instituted

personally against any member of the Committee in respect of any act done *bona fide* in pursuance of these Rules or in pursuance of the functions and powers of the Committee.

23. Secretary of the Committee

- (1) Unless otherwise provided for, the Assistant Registrar ADR, shall be the Secretary of the Committee.
- (2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment of the Secretary are as determined by the NJSS.
- (3) The Secretary:
 - (a) is the Chief Executive Officer of the Committee;
 - (b) is the head of the service of the Committee; and
 - (c) shall, subject to the directions of the Committee through its Chair, administer the affairs of the Committee.

24. Appointment of officers of the Committee

- (1) Other staff employed within the National Court under its ADR track or division shall serve the Committee in such manner and capacity as the Committee through its Chair may direct in consultation with the Chief Justice and the Secretary of the NJSS.
- (2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment of persons appointed under subrule (1) are as determined by the NJSS.

Division 5 – Mediator Accrediting Council

25. Establishment of Mediator Accrediting Council

A Mediator Accrediting Council is hereby established.

26. Membership of the Council

The Council shall consist of the:

- (a) Chief Justice who shall be the Chair of the Council;
- (b) Deputy Chief Justice;
- (c) Chair of the ADR Committee;
- (d) Registrar of the National and Supreme Courts;

- (e) Chief Magistrate;
- (f) Secretary for the Department of Justice and Attorney-General or the Secretary's nominee who shall be the Deputy Secretary-Policy;
- (g) Solicitor-General or the nominee of the Solicitor-General who shall be one of the Deputies of the Solicitor-General; and
- (h) the President or other person heading an organisation representing mediators and other ADR Practitioners in Papua New Guinea.

27. Service of documents

Service upon the Council of any order notice or other document shall be at the office of the Council and shall be executed by delivering the same by hand delivery to the Secretary of the Council or the nominee of the Secretary or by sending the same by electronic transmission with generated confirmation of transmission to the Secretary or the nominee of the Secretary.

28. Functions and powers of the Council

- (1) The Council shall:
 - (a) receive and determine all applications for accreditation pursuant to these Rules;
 - (b) refer any complaint against any mediator or ADR Practitioner for processing and resolution under Order 5 (*discipline of mediators*);
 - (c) support the Committee in the discharge of the Committee's functions and powers as specified in these Rules and ensure it has such facilities and resources as are necessary to carry out its powers and functions;
 - (d) take all steps necessary and within its powers to enable the Committee to carry out its functions and powers effectively and efficiently;
 - (e) publish or arrange for the publication of such written material as it considers of benefit to the public or to mediators and other ADR Practitioners;
 - (f) provide or arrange through the Committee for the provision of educational and training programs for mediators and other ADR Practitioners;
 - (g) determine the accreditation criteria to be applied from time to time; and
 - (h) have all powers necessary to carry out its functions.
- (2) Until such time as the Council decides otherwise, the accreditation criteria set out in Schedule 1 to these Rules for mediators shall be deemed to be the Council's determination.

29. Meetings of the Council

- (1) The Council shall meet at such times, places and days as the Chair determines for the efficient conduct of the Council's meeting.
- (2) Any three members of the Council, which shall include the Chief Justice and the Chair of the Committee, shall constitute a quorum.
- (3) The Chair of the Council shall preside and:
 - (a) all matters shall be decided by a majority of the votes of the members of the Council present and voting; and
 - (b) the Chair of the Council has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.
- (4) Minutes of each meeting shall be:
 - (a) kept by the Secretary;
 - (b) confirmed by the Council at the next meeting of the Council; and
 - (c) signed by the Chair of the Council.

30. Protection of the Council

No act done *bona fide* or proceedings undertaken *bona fide* under these Rules shall be questioned on the ground:

- (a) of the existence of any vacancy in the membership of the Council or any defect in the composition of the membership of the Council; or
- (b) of any omission, defect or irregularity not affecting the merits of the case.

31. Protection of members of the Council

No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Council in respect of any act done *bona fide* in pursuance of these Rules.

32. Secretary of the Council

- (1) Unless otherwise provided for, the Assistant Registrar ADR shall serve as the Secretary of the Council.
- (2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment of the Secretary are as determined by the NJSS.
- (3) The Secretary
 - (a) is the Chief Executive Officer of the Council;

- (b) is the head of the service of the Council; and
- (c) shall, subject to the directions of the Council, administer the affairs of the Council.

33. Appointment of officers of the Council

- (1) Other staff employed within the National Court under its ADR Track or Division shall also serve the Council in such manner and capacity as the Council may direct in consultation with the Judge Administrator ADR.
- (2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment of persons appointed under subrule (1) are as determined by the NJSS.

ORDER 4 — CODE OF PROFESSIONAL CONDUCT FOR ADR PRACTITIONERS***Division 1 – Preliminary*****1. Application**

- (1) Unless otherwise provided, this Order applies only to mediators.
- (2) This Code shall be read and applied in conjunction with the accreditation criteria prescribed by these Rules.
- (3) In the event of any conflict between any provision in this Code and the Act or any other Act under which a mediator practices, the provision of the Act or the other Act shall prevail to the extent of any such inconsistency.
- (4) This Code is in addition to and not in derogation of any applicable statute-based professional conduct rules or code to which a mediator is subject and any such professional conduct rule or code shall to the extent of any inconsistency override the provisions of this Code.

Division 2 – Duties and Responsibilities of Mediators**2. Duty of every mediator**

It is the duty of a mediator to comply with the relevant provisions of the Act, and this Code as they apply to him and:

- (a) not to engage at any time in conduct (whether in pursuit of their profession or otherwise) which is:
 - (i) illegal;
 - (ii) dishonest;
 - (iii) unprofessional;
 - (iv) prejudicial to the administration of justice; or
 - (v) may otherwise bring the mediation profession into disrepute; and
- (b) to observe the ethics and etiquette of the mediation profession as set out in this Code;
- (c) to be competent in all professional activities as a mediator; and
- (d) to respond within a reasonable time and in any event within 14 days or such further time as may be extended by the Complaints Officer or the Complaints Authority, to any requirement of the Council for comments or information and in doing so shall furnish in writing a full and accurate account of their conduct:
 - (i) in relation to the matter the subject of a complaint; or

- (ii) in relation to any other matter that is the subject of an investigation or inquiry by the Council.

3. Maintaining professional integrity

- (1) Subject to subrules (2) and (3) a mediator shall not:
 - (a) provide any advice or opinion or an evaluation of a matter in dispute; and
 - (b) knowingly assist or seek to induce a breach of this Code by another mediator.
- (2) Subrule (1) does not preclude a mediator from providing information or referring parties to information that is generally available, exercising care not to provide any prescriptive advice or opinion.
- (3) The provisions of subrule (1) do not apply to cases in which a mediator is providing a blended form or a customary form of mediation, where the mediator shall be at liberty to provide such advice or opinion as fairly and generally as is possible with proper reason to help determine the dispute between the parties, provided:
 - (a) the mediator is an expert in the area of dispute (except in the case of customary process) and has the appropriate knowledge, experience and exposure on the matters in dispute between the parties; or
 - (b) the participants have requested such advice or opinion and or the parties have given prior consent for the provision of such advice or opinion; and
 - (c) the information or advice or opinion provided:
 - (i) is within the mediator's qualification and competence; and
 - (ii) does not amount to an interpretation of a law, a statement or behaviour.
- (4) Mediators shall take reasonable care to ensure that their mediation partners, associates or employees do not commit an act or omission which would be a breach of this Code if committed by a mediator.
- (5) Mediators shall properly supervise all professional work carried out for them and on their behalf by a person who is not an accredited mediator.
- (6) A mediator shall promptly report to the Council:
 - (a) a breach of any provision of the Act or any other Act; or
 - (b) these Rules; or
 - (c) a breach of the accreditation criteria; or
 - (d) a breach of this Code by another mediator.

- (7) A mediator shall not permit a party, or any person or entity associated with a party to make gifts or lend money:
 - (a) to the mediator or a member of their family;
 - (b) to a domestic partner of the mediator or a member of that partner's family;
or
 - (c) to a company (other than a company the shares in which are listed on any stock exchange) in which any of the persons referred to in subrules 7(a) and (b) has a significant beneficial interest.
- (8) Mediators shall take all reasonable steps to ensure that they and their practice partners, their associates and their employees do not engage in any conduct that brings into disrepute their integrity as mediators and the general good standing and repute of the mediation profession.
- (9) Mediators shall ensure that the participants in a mediation are aware of the interests of vulnerable people such as children, aged parents, and others who may be affected by the dispute and make appropriate provisions for such persons.

4. Competence

- (1) Mediators shall maintain their competency levels by having the necessary knowledge and skills and ethical standards as specified respectively in subrules (2), (3) and (4) and by undertaking among others, the following steps:
 - (a) regular professional debriefing following solo or co-mediations through individual or group sessions with another experienced mediator, the purpose of which is to:
 - (i) address matters relating to skills development;
 - (ii) address conceptual and professional issues;
 - (iii) address ethical dilemmas; and
 - (iv) ensure good ongoing emotional health of mediators;
 - (b) participate in continuing professional development training; and
 - (c) where possible, participate in programs of peer consultation and help train and mentor the work of less experienced mediators.
- (2) A mediator's knowledge must include:
 - (a) the nature and causes of conflict, including the dynamics of power and violence;
 - (b) appropriateness or inappropriateness of

mediation;

- (c) pre-mediation preparation, screening and intake;
- (d) communication patterns in conflict and negotiation situations;
- (e) negotiation dynamics in mediation;
- (f) cross-cultural issues in mediation and dispute resolution;
- (g) principles, stages and functions of a mediation process;
- (h) roles and functions of mediators;
- (i) roles and functions of support persons, lawyers and other professionals in Mediation; and
- (j) law on confidentiality and enforceability of mediated agreements and the liability of mediators.

(3) A mediator's skills must include:

- (a) preparation and dispute diagnosis in mediation;
- (b) intake and screening of both the parties and the dispute to assess suitability for mediation;
- (c) conduct and management of the mediation process;
- (d) appropriate communication skills, including listening, questioning, reflecting and summarising, required for the conduct of mediation;
- (e) negotiation techniques and knowledge of the mediator's role in facilitating negotiation and problem-solving;
- (f) mediator interventions appropriate for standard difficulties in mediation;
- (g) potential responses to high emotion, power imbalances and violence;
- (h) use of separate meetings and shuttle mediation; and
- (i) drafting mediated agreements.

(4) A mediator's ethical understandings must include:

- (a) avoidance of conflicts of interest;
- (b) proper and appropriate marketing and advertising of their particular mediation practices;

- (c) confidentiality, privacy and reporting obligations;
- (d) neutrality and impartiality;
- (e) fiduciary obligations;
- (f) supporting fairness and equity in the mediation process; and
- (g) withdrawal from and termination of the mediation process.

5. Inter-professional relationships

- (1) Mediators shall respect other mediation professionals and other professional advisers and experts who complement their practice.
- (2) Mediators shall promote cooperation with other professionals and encourage their clients to use other professional resources when appropriate.
- (3) When disputes involve more than one facilitative or other decision-making process, mediators will keep themselves informed and keep other professional colleagues informed about the processes taking place, having due regard to the duties of confidentiality.
- (4) Mediators shall consider and respond to any consultative responsibilities that extend beyond more narrowly defined obligations to facilitate a process directly between the disputants.

6. Public statements and advertising

- (1) A mediator who makes a public statement concerning mediation shall ensure that the statement:
 - (a) has the purpose of educating the public about the relevant process as a form of dispute resolution so as to enable members of the public to make informed decisions and choices concerning the resolution of their disputes or conflicts;
 - (b) presents the mediation process objectively as one which seeks to empower participants directly and constitutes only one of several methods for arriving at a negotiated outcome;
 - (c) does not mislead the public, misrepresent facts or contain any statements likely to deceive the public or create false or unjustified expectations of favourable outcomes;
 - (d) does not suggest a representation of the mediation profession unless expressly authorised by a competent authority so to do;
 - (e) does not promise or guarantee favourable outcomes; and
 - (f) does not refer to any particular mediation and or participants in such a

process.

- (2) Mediators may advertise in connection with their practice by means of a transmission or publication, provided that such advertising:
 - (a) is not false in any material particular;
 - (b) is not misleading or deceptive or likely to mislead or deceive;
 - (c) is not vulgar, sensational, of such frequency or otherwise such as would or would be likely to adversely affect the reputation or standing of the mediator or any other mediator or of the mediation profession; or
 - (d) does not claim or imply superiority of himself over any or all other mediators.
- (3) An advertisement, including a business card, may contain any information that accurately describes the mediator's name, office address or location, contact details, training and experience in the mediation process, mediation qualifications such as certifications and accreditations, appropriate professional affiliations and membership status, advantages of a mediation process, any subject expertise and any additional relevant or important consumer information.
- (4) Subject to the other provisions of this subrule, a mediator may in any lecture, talk, public appearance, or publication on any subject be identified by their name, firm, academic qualifications and the fact that they are mediators.
- (5) Where the subject matter or part of the subject matter of a lecture, talk, public appearance or publication referred to in subrule (4) concerns a matter in which the mediator is or has been professionally engaged, the mediator shall be confined to giving an objective account of the matter without giving undue publicity to their own conduct of the matter and without breaching the confidentiality provisions in these Rules.
- (6) Mediators may report on any evaluation of their services that might assist parties to better understand the mediation process.
- (7) No communication of a kind referred to in this Rule by a mediator shall include any information which might permit the identification of any of the parties to a mediation without the consent of all of those parties.
- (8) A mediator shall, where possible, encourage and or participate in research that can support further professional and public education in connection with mediation and other forms of ADR.

7. Display of signs

Subject to Order 4 rule 6, mediators may display or permit to be displayed on or adjacent to their place of practice such signs indicating:

- (a) that they are mediators;

- (b) where their office is located; and
- (c) such other information concerning their practice as they may think fit.

8. Requirement for alterations, withdrawal of statement, etc

- (1) Where the Council believes an advertisement, sign or publication contravenes the provisions of this Code, it may, by notice in writing to the mediator, direct:
 - (a) the alteration, withdrawal or discontinuance of an advertisement;
 - (b) the removal or alteration of a sign; or
 - (c) the alteration or discontinuance of the use of a publication, by the mediator.
- (2) A mediator to whom a direction has been given under subrule (1) shall forthwith comply with the direction.
- (3) If the mediator who has been served with such direction fails to comply with it within seven days, the Council may refer the matter to the Authority to inquire into and deal with the matter at the mediator's cost.

9. Diligence

- (1) A mediator shall:
 - (a) always be frank and open with the participants and shall at all times give them candid opinion as to the mediator's role; and
 - (b) take such steps as are necessary and reasonably available to undertake the mediation using their best endeavours to complete the process as soon as possible or within such period as might be agreed to by the participants and the mediator or as might be specified in any referral.
- (2) If a mediator agrees to mediate and it is or becomes apparent that they cannot do the work within a reasonable time, the mediator shall so inform the participants and Court or referring authority or person.
- (3) A mediator shall not:
 - (a) take unnecessary steps or do work in such a manner as to increase costs to the participants; or
 - (b) agree to and undertake mediation on a matter which is beyond their competence.

10. Confidentiality and ethical behaviours

- (1) A mediator shall not directly or indirectly:
 - (a) disclose to any person who is not a party to a mediation confidential

information regarding the participants in the process or matters arising during a mediation; or

- (b) use a participant's right to confidentiality in anyway detrimental to the interests of that participant or any other participant; or
 - (c) lend or reveal the contents of the papers in any brief, advice or instructions to any person, except:
 - (i) for necessary administrative, research, supervisory or educational purposes, excluding any information which might disclose the identity of any of the parties to a mediation, without the consent of all the participants; or
 - (ii) with the consent of the participants to the mediation process; or
 - (iii) when required to do so by law; or
 - (iv) where permitted by existing ethical guidelines or requirements, or the information discloses an actual or potential threat to human life or safety; or
 - (v) where necessary for replying to or defending any charge or complaint of criminal or unprofessional conduct or professional misconduct brought against the mediator or the mediator's mediation partners, associates or employees.
- (2) Before undertaking the mediation process, mediators shall:
- (a) clarify the participants' expectations of confidentiality;
 - (b) ensure that the participants properly understand their duties and responsibilities of confidentiality and the mediation process to be applied;
 - (c) if there is any written agreement by the participants to voluntarily enter into the mediation, ensure that appropriate and adequate provisions are made for the confidentiality of the process;
 - (d) inform the participants of the limitations of confidentiality, such as statutory and judicially mandated reporting and any reporting required pursuant to professional ethical requirements; and
 - (e) inform the participants concerning the mediator's obligations of confidentiality in respect of any private session that might be conducted during the mediation process.
- (3) If subpoenaed, or otherwise notified to testify or to produce documents to any court or other competent tribunal, the mediator shall attempt to inform the participants as soon as reasonably practicable.
- (4) A mediator shall not give evidence without an order of a court or other competent tribunal if the mediator reasonably believes doing so would violate

an obligation of confidentiality to the participants.

- (5) A mediator may include in any agreement relating to a mediation, indemnification provisions in relation to costs incurred or may be incurred by the mediator.
- (6) With the participants' consent, the mediator may discuss the mediation process with the participants' lawyers and other expert advisors where such advisors have not attended all or part of an actual mediation session.
- (7) Where the participants reach an agreement in a mediation process, the substance of the proposed agreement may, with the permission of participants, be disclosed by the mediator to their respective representatives, advisors or others and may be used by the mediator for debriefing, research and discussion purposes for educational or other purposes aimed at promoting mediation as a form of conflict resolution but, excluding any information which might permit the identification of any of the parties to a mediation without the consent of all of those parties.
- (8) Mediators shall maintain confidentiality in the storage and disposal of client records and must take all reasonable measures to ensure that their office and administrative staff maintain such confidentiality.
- (9) Mediators are not required to retain documents relating to a dispute but may retain a copy of any written agreement to enter into the mediation process and any written agreement as to outcomes and notes relating to the content of the dispute, particularly where duty-of-care or duty-to-warn issues are identified.
- (10) Mediators shall at all times strive to establish and maintain a relationship of trust and confidence with the parties.
- (11) Mediators shall impress upon the parties that they cannot serve them adequately without knowledge of all matters that might be relevant to the case and that the parties should not withhold information from a mediator which they might think is embarrassing or harmful to their respective interests.

Division 3 – Conducting a Mediation

11. Starting a mediation process

- (1) A mediation process commences with an intake and concludes with the filing in Court of a mediator's certificate in accordance with Order 3 rule 9(7).
- (2) The objectives of an intake process may include, among others:
 - (a) determination of whether mediation, including on-line mediation by video conferencing, is appropriate in the circumstances of the case;
 - (b) determination of whether an interpreter is required;
 - (c) explanation of the role of a co-mediator;

- (d) determination of whether there are any power imbalances and security issues and, if so, making provision to adequately address those issues;
 - (e) assisting the participants to prepare for the mediation conference process;
 - (f) ensuring that by receiving relevant advice, participants are in a better position to make an informed decision when attending a mediation conference;
 - (g) ensuring that every participant receives information about the roles of each party in the mediation, which may involve questions relating to the role of lawyers, support personnel and others;
 - (h) checking whether any information needs to be exchanged, the means by which this can be done and what information, documents or things need to be available during the mediation process;
 - (i) settling any preliminary procedural issues;
 - (j) what reporting will take place;
 - (k) confirmation that the participants have proper authority to negotiate and settle;
 - (l) clarifying the terms of any agreement to enter into the mediation process;
 - (m) settling venue and timing issues;
 - (n) explaining, if the parties so require, how the participants can access copies of the criteria for mediator accreditation and these Rules.
- (3) At the intake the mediator shall:
- (a) describe and explain to the participants the mediation process that is to be used;
 - (b) where necessary, discuss the appropriateness of the process for the participants in light of their particular circumstances, the benefits and risks of the process, and other alternatives open to the participants;
 - (c) discuss with the participants the confidentiality of the mediation process and any limitations on such confidentiality;
 - (d) advise the participants about how they or the mediator can suspend or terminate the mediation;
 - (e) reach agreement with the participants as to any costs and how such costs are to be paid;
 - (f) advise the participants about any indemnity provisions contained in any agreement to mediate, for example, where a mediator seeks to be

indemnified in respect of their costs in response to any legal costs that may be incurred by the mediator;

- (g) advise the participants of the mediator's role in relation to the provision of advice or other services;
 - (h) inform the participants about the procedures and practices in the mediation, such as:
 - (i) the circumstances under which separate sessions may be held;
 - (ii) how participants may seek information and advice from variety of sources during the process;
 - (iii) how participants may withdraw from the process;
 - (iv) the participants are not required to reach an agreement but are required to use the mediation in good faith to resolve all issues between them;
 - (v) the opportunities for separate communication with the participants and or with their legal representatives; and
 - (vi) the circumstances in which other persons can be involved in the process, for example, the participation of experts, support persons or interpreters who may be required.
- (4) If the mediator is also:
- (a) a lawyer, they shall inform the participants that they:
 - (i) cannot provide legal advice unless using a blended process with the participants' clear consent; or
 - (ii) cannot represent any of the participants in any related legal action; or
 - (iii) if requested to do so by the participants, may refer the parties to particular court decisions, legislation (including regulations, by-laws, rules and codes of conduct) or refer them to practical areas of research or information so that the parties may advise themselves on the relevant points of law and or legal process;
 - (b) a psychologist, counsellor or therapist, they shall inform the participants that they cannot provide their other professional services to any of the participants;
 - (c) a professional in other fields, they shall inform the participants that they will not provide any advice or opinion based on their other professional skills and experience.
- (5) In addition to the requirements of subrules (1), (3), and if applicable (4), the mediator shall ensure that an intake is conducted either by them or by some other

person competent to conduct the intake who will conduct the mediation with them.

12. Power and safety issues

- (1) In a case where there is a serious power imbalance, safety concerns or issues of control or intimidation, mediation shall not proceed unless the mediator is sufficiently experienced to deal with those issues and has the parties' consent to proceed.
- (2) If at any time during the mediation process, abuse is present, implied or threatened, the mediator shall take appropriate measures to ensure the safety of participants in so far as the mediator is able to do so by, among other things:
 - (a) immediately activating appropriate pre-determined security protocols;
 - (b) using video conferencing or other means of conferencing by telecommunication;
 - (c) requiring separate sessions with the participants;
 - (d) enabling a representative, advocate or legal representative of the mediator to attend the mediation sessions;
 - (e) referring the participants to appropriate resources or authorities to deal with the issues presented if those issues go beyond the mediator's abilities;
 - (f) suspending or terminating the mediation session, with appropriate steps taken to protect the safety of the participants; or
 - (g) adopting any other personal protective and screening arrangements which the mediator deems necessary.

13. Impartiality and conflict of interest

- (1) A mediator shall conduct the mediation process in an impartial manner and adhere to the Mediator Standards and this Code and must avoid:
 - (a) any conflict between the interests of the mediator and those of any of the participants;
 - (b) any personal judgment or belief of the mediator which could affect the impartiality required of the mediator during the mediation process;
 - (c) any favouritism or bias in word or in action or in omission of word or action that gives the appearance of any favour or bias.
- (2) Except where it is customarily or culturally required and with the express agreement of all the participants but subject to subrule (4), mediators shall not facilitate a mediation process involving:

- (a) close friends;
- (b) relatives;
- (c) colleagues;
- (d) supervisors or superiors in their employment; or
- (e) their students,

by reason of which it would be difficult for them to maintain their professional independence.

- (3) If a mediator has or acquires any interest in the subject matter of a dispute being or going to be mediated which may conflict with or adverse to, the interests of the parties, the mediator shall fully disclose the nature of the interest and all actual and any potential grounds of bias and conflict of interest well in advance of the mediation process or as soon as the circumstances giving rise to a possible conflict of interest arises whereupon the participants shall be free to either retain the mediator by an informed waiver of the conflict of interest or to appoint another mediator.
- (4) Notwithstanding subrule (3), if a mediator forms the view that a bias or conflict of interest impairs or has the likelihood of impairing his impartiality, he shall disqualify himself and withdraw from the mediation process regardless of any express agreement of the participants for an informed waiver or to retain him as their mediator.
- (5) Save only to provide a list of alternatives if need be and subject to the subrule (6), a mediator shall avoid conflicts of interest, or potential grounds for bias or the perception thereof, in recommending the services of other professionals, including the appointment of another mediator.
- (6) The provisions of subrule (5) do not apply to the Judge Administrator or any other Judge exercising their judicial function in appointing an appropriately, trained and experienced mediator to mediate in each case.
- (7) A mediator shall not use information about participants obtained in the course of any mediation for his personal benefit or for the gain or advantage of any other person or entity.
- (8) A perception by one or all the participants that their mediator is partial does not in itself require the mediator to withdraw but that perception may be sufficient to give cause for the participants to terminate the mediation and an obligation on the mediator to remind the participants of their right to terminate the mediation process.
- (9) Prior to and or during the course of mediation, mediators shall not become involved in relationships with any of the participants that might impair the mediators' professional judgment or in any way increase the risk of exploiting participants in the mediation.

- (10) Mediators shall adhere to and be familiar with this Code and the accreditation criteria as well as any ethical standards prescribed by their other professional organisations, such as the *Professional Conduct Rules* for lawyers.

14. Procedural fairness

A mediator shall conduct mediation processes in a procedurally fair manner, without limiting by:

- (a) an avoidance of making of statements or expressing any view as to the truthfulness, validity or the reasonableness of any statement, view, representation or offer made by any of the parties in a mediation;
- (b) an avoidance of any pressure or undue influence on the participants to reach an agreement;
- (c) supporting all participants to reach an agreement voluntarily without any undue influence and based on informed consent;
- (d) providing the participants with an opportunity to speak and to be heard and to articulate their own needs, interests and concerns;
- (e) suspending or terminating a mediation process if the mediator believes that a participant is unable or unwilling to participate in the process after due consultation with the participant concerned;
- (f) encouraging and supporting balanced negotiations and ensuring that manipulative or intimidating negotiating tactics employed by any of the participants do not adversely affect the fairness of the process;
- (g) enabling negotiations to proceed in a fair and orderly manner;
- (h) taking reasonable measures to ensure that the participants have sufficient time and opportunity to access sources of advice or information, if a participant needs additional information or assistance;
- (i) encouraging participants to obtain independent professional advice or information where necessary and appropriate;
- (j) taking reasonable measures to ensure that the participants are competent and informed and can reach an agreement fairly; and
- (k) enabling the participants to assess the feasibility and practicality of any proposed agreement in both the long and short term, in accordance with the participants' own subjective criteria of fairness, considering where appropriate, any cultural or customary differences and the interests of any vulnerable stakeholders.

Division 4 – Termination, Suspension and Conclusion of Mediation

15. Termination and suspension of mediation

- (1) A mediator may suspend or terminate a mediation process if in the opinion of the mediator a continuation of the process might harm or prejudice any of the parties.
- (2) A mediator may decide to suspend or terminate a mediation if in his opinion any of the parties or their advisers are seeking to misuse the mediation process to achieve other ends such as:
 - (a) delaying proceedings in the hope of reinforcing the continuation of an existing arrangement or to prolong litigation, loss of the other parties' evidence or obtain other unfair advantages;
 - (b) 'buying' time in order to dissipate or conceal assets;
 - (c) attending the mediation process other than in good faith to find a solution to the dispute being mediated;
 - (d) in some other way merely exhausting the usefulness of the mediation process as a matter of formality only with no real commitment to finding a resolution of a dispute; or
 - (e) causing prejudice to other parties in the mediation.
- (3) Before suspending or terminating a mediation process, a mediator shall first give reasonable notice of his intention to do so to the parties and the reasons for giving such notice.
- (4) Unless the parties make real and genuine effort towards proper use of the mediation process and satisfactorily address the reason for the mediator giving notice under subrule (3), the mediator shall effect the suspension or termination.
- (5) Where the parties to a mediation process reach an agreement that is unconscionable in the mediator's opinion, the mediator may terminate the mediation.
- (6) At any time before, during or after the conduct of a mediation, the mediator may consult with the Judge Administrator ADR for *ad hoc* advice on any ethical issues and/or other issues relating to that mediation or the proposed conduct of that mediation.

16. Conclusion of mediation

- (1) A mediation shall conclude upon:
 - (a) the parties reaching agreement in writing on all the issues presented in the proceedings that is the subject of the mediation process; or

- (b) the matter not having been fully settled or has only partially settled but the parties have agreed on how to resolve matters in accordance with any Court order; or
 - (c) termination of the mediation by the mediator or by any one of the parties with the Mediator's approval; or
 - (d) agreement by the parties to terminate the mediation with the Mediator's approval.
- (2) Upon conclusion of a mediation under any of the circumstances in subrule (1) the Mediator shall file an appropriate Mediator's certificate.

ORDER 5 — DISCIPLINE OF MEDIATORS**1. Complaints and complaints handling system**

- (1) A system of receiving and handling complaints regarding the proper conduct of mediators and ADR Practitioners is hereby established.
- (2) The phrase “ADR Practitioner” in this Order shall be read and understood to mean and cover mediators and other ADR Practitioners.
- (3) This Order shall not apply to complaints against an ADR Practitioner who is a Judge or a Magistrate.

2. Handling of complaints

- (1) The Committee shall appoint a person to be the Complaints Officer whose function it is to receive and process all complaints from users of a form of ADR or any other person interested in the integrity and confidence in a system of ADR recognised under these Rules.
- (2) A complaint in relation to the conduct or behaviour of an ADR Practitioner shall be in Form 7 of Schedule 2 and may be lodged by:
 - (a) any party to or participants at a mediation or an ADR process; or
 - (b) the Committee.
- (3) Where the complaint is made under subrule (2)(a), the fee prescribed in Schedule 5 must be paid.
- (4) All complaints against ADR Practitioners shall be lodged with the Complaints Officer or other officers performing an administrative function within the ADR division or track of the National Court.
- (5) Complaints may be lodged:
 - (a) in writing;
 - (b) by telephoning or emailing the Complaints Officer or any other officer;
or
 - (c) by personally attending and speaking to the Complaints Officer or any other ADR officer.
- (6) All complaints lodged under subrules 5(b) or (c) shall be recorded by the Complaints Officer and the complaint, if in writing, and the record of it if not in writing, shall be signed as a true and correct complaint received by the Complaints Officer from a complainant whose name and full particulars shall be recorded.

- (7) Complaints lodged with the Complaints Officer shall specify the conduct or behaviour complained of in sufficient detail to fully inform the person against whom the complaint is made and the Complaints Authority of the nature of the complaint and must be lodged with the Complaints Officer within 60 days from the date of occurrence of such conduct or behaviour.

3. Processing of complaints

- (1) Within seven days of the receipt of the complaint, the Complaints Officer shall deliver a copy of the complaint to the ADR Practitioner or the person who is the subject of the complaint.
- (2) On receiving the complaint, the ADR Practitioner or person against whom the complaint has been made shall:
 - (a) within 14 days of receipt or such further time as the Complaints Officer shall permit, provide to the Complaints Officer a full and frank explanation of the alleged behaviour or conduct; and
 - (b) unless excused by the Complaints Officer, take every step to have the matter resolved promptly and amicably through joint discussions with the complainant, the mediator and the Complaints Officer and/or mediation facilitated by the Complaints Officer within 30 days from the expiry of the 14 days stipulated under subrule (2)(a).
- (3) Any failure by an ADR Practitioner to take the steps as required under subrule (2) without reasonable excuse shall be deemed to be improper conduct by an ADR Practitioner.
- (4) If the complaint is not resolved satisfactorily in accordance with subrule (2), the Complaints Officer shall refer the matter to the Authority and advise the parties of the referral.
- (5) Regardless of whether the complaint has been resolved in accordance with subrule (2), the Complaints Officer shall, if the complaint includes allegations which would if proven amount to misconduct, refer the matter to the Authority and advise the parties of the referral.
- (6) Subject to subrule (7), a referral under subrule (4) shall not include the content of any discussion or mediation pursuant to subrule (2)(b).
- (7) A referral may include a report and recommendations from the Complaints Officer.
- (8) An inquiry under these Rules shall continue notwithstanding that a mediator has ceased to be a mediator after the commencement of the enquiry.

4. Complaints Authority

- (1) A Complaints Authority is hereby established.

- (2) The Authority shall be constituted by a Judge or Magistrate who is a member of the Committee other than the Chair who is a most experienced and successful mediator appointed by that Committee and shall hold that position for the currency of their membership of the Committee or such lesser periods the Committee decides.
- (3) The Authority shall not participate in any deliberations of the Committee regarding a complaint concerning an ADR Practitioner.

5. Protection of the Authority

No action, suit, prosecution or other proceedings shall be brought or instituted personally against a person constituting the Authority in respect of any act done *bona fide* in pursuance or execution or intended execution of these Rules.

6. Functions of the Authority

The function of the Authority is to receive any referral of a complaint from the Complaints Officer and to have it processed and determined expeditiously.

7. Powers of the Authority

The Authority shall have powers similar to a commission of inquiry under the *Commissions of Inquiry Act* Chapter 31, or other administrative authorities and may otherwise determine its own procedures when enquiring into complaints of misconduct or improper conduct and shall observe the rules of natural justice in carrying out an inquiry.

8. Proceedings before the Authority

- (1) All proceedings of the Authority shall be conducted in private and remain confidential save only for its final decision.
- (2) Evidence given before the Authority shall be given on oath and witnesses may be examined and cross examined but the witnesses shall be protected from self-incrimination.
- (3) The Authority may permit counsel assistance to both the complainant and the ADR Practitioner the subject of the inquiry provided the Authority is of the view that counsel will assist in the enquiry and allow for an expedited outcome.
- (4) The Authority shall cause a written record to be kept of proceedings of its enquiries which shall remain confidential and available only for use in aid of determining the accreditation and certification of an ADR Practitioner within and outside Papua New Guinea.

9. Decisions of the Authority

- (1) After duly conducting an inquiry, the Authority may make a decision that an ADR Practitioner has committed an act or omission of misconduct or improper conduct as an ADR Practitioner based on the weight and strength of the evidence before the Authority.
- (2) Where the Authority is of the opinion that an ADR Practitioner has not committed an act or omission of misconduct or improper conduct as an ADR Practitioner, it shall return a decision to that effect and may order costs against the complainant in favour of the ADR Practitioner.
- (3) Where the Authority is of the opinion that an ADR Practitioner has committed an act or omission of misconduct or improper conduct as an ADR Practitioner, it may so find and impose any one or more of the following penalties depending on the nature of the misconduct:
 - (a) make a finding of misconduct or improper conduct as a mediator;
 - (b) reprimand the ADR Practitioner; or
 - (c) impose conditions or restrictions on the ADR Practitioner's practice for such period as it thinks fit; or
 - (d) direct the Registrar to cancel the ADR Practitioner's practising certificate issued under Order 3 rule 11; or
 - (e) order the removal of the ADR Practitioner's name from the Roll of accredited ADR Practitioners; or
 - (f) order the suspension of the ADR Practitioner from practice for such period as it thinks proper; or
 - (g) order the ADR Practitioner to pay compensation in cash or in kind to another person affected by the mediator or the ADR Practitioner's misconduct; or
 - (h) order the ADR Practitioner to complete such course of mediator education or a form of ADR education as the Authority determines; or
 - (i) order the ADR Practitioner to make their practice and books of accounts relating to the practice available to such persons and at such times as the Authority determines; or
 - (j) order the ADR Practitioner to report on the conduct of their practice at such times and in such formats the Authority determines; or
 - (k) order the ADR Practitioner to take advice on the management and conduct of their practice from such persons and for such period as the Authority determines; or

- (l) order the ADR Practitioner not to accept work or to hold himself or herself out as accepting work in any form of ADR specified by Authority; or
- (m) order the ADR Practitioner to employ in their practice a member of a class of persons specified by the Authority; or
- (n) order the ADR Practitioner not to employ such persons as are specified by the Authority; or
- (o) order the ADR Practitioner to pay the costs of the inquiry; or
- (p) order any combination of the penalties prescribed above against the ADR Practitioner.

10. Decision against a person other than a mediator or an ADR practitioner

- (1) Subject to subrule (2), where in the course of an inquiry, the Authority is of the opinion that a person who is not an ADR Practitioner has been a party to, or has caused, or assisted in causing any act of default in the practice of the ADR Practitioner who employed that person, it may order that no ADR Practitioner shall, in connection with a practice as an ADR Practitioner, employ such person for such period as it may specify.
- (2) The Authority shall first accord the person concerned a reasonable opportunity to be heard before making orders under subrule (1).
- (3) An order made under subrule (1) shall be published in a newspaper circulating in the country.

11. Establishment of Appeals Board

- (1) An Appeals Board is hereby established.
- (2) Subject to subrule (3) and (4), the Board shall consist of the following persons:
 - (a) a Judge who is an accredited ADR Practitioner with not less than four years unrestricted practising certificate and is not a member of the Committee or Council appointed by Chief Justice as the chair of the Board;
 - (b) two Magistrates who are accredited ADR Practitioners who have not less than four years unrestricted practising certificates in Papua New Guinea or other countries appointed by the Council as members.
- (3) The appointments under subrule (2) shall be based on the views of the PNG Law Society and any association or incorporated entity that represents ADR Practitioners in Papua New Guinea as sought and communicated through the Committee which shall make the appropriate recommendation to the Chief Justice and or the Council.
- (4) Appointments under subrule (2) shall be for a period of three years or such longer period as the Council may determine.

- (5) The Council may make more than two appointments pursuant to each of subrules (2)(b) to provide a panel from which the members of the Board may be drawn for a particular appeal.
- (6) The Chair of the Board shall preside at all proceedings and meetings of the Board and decisions in the proceedings or meetings shall be by consensus or failing that by simple majority of any two members of the Board.

12. Vacation of office.

- (1) The office of a member of the Board is vacated if that member:
 - (a) dies;
 - (b) becomes incapable of carrying out their duties by reason of mental or physical illness;
 - (c) becomes insolvent or makes an arrangement or composition with creditors;
 - (d) is convicted of an offence be it criminal or disciplinary whether it involves imprisonment or not;
 - (e) being an ADR Practitioner as at the date of the member's appointment, ceases to practice in that capacity during the period of appointment; or
 - (f) ceases to reside permanently in the country.
- (2) Where a vacancy exists in the composition of the Board, the Chief Justice and the Council shall respectively forthwith fill the vacancy by making the relevant appointments in a timely manner.

13. Defect in appointment

No action or omission of the Board or an action or omission under its authority shall be declared invalid by reason of any defect that is subsequently discovered in the appointment or qualifications of any member of the Board.

14. Protection of the Appeals Board

No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Board in respect of any act done *bona fide* in pursuance of these Rules.

15. Appeal Board's jurisdiction

- (1) The Board has power to hear and determine appeals from a decision of the Council or the Authority.

- (2) An appeal from a decision of the Council under Order 3 rules 4, 6 or 9 or of the Authority under Order 5 rule 9 shall be lodged within 21 days from the date of the decision and shall be in Form 8 of Schedule 2.
- (3) The appellant shall state succinctly and clearly the grounds relied upon with the relevant particulars.
- (4) An appeal shall be by way of rehearing on the record of the proceedings from which the appeal arises.

16. Decision on appeal

- (1) After duly hearing an appeal, the Board may:
 - (a) either uphold the appeal in part or in whole;
 - (b) dismiss the appeal either in whole or in part; and either
 - (c) affirm or confirm the decision appealed from; or
 - (d) vary the decision the subject of the appeal either wholly or in part as the case might be.
- (2) The decision of the Board is final and is not open to further appeal or review.

17. Secretary of Authority and Appeals Board

The Secretary of the Council shall act as Secretary of the Authority and of the Board.

ORDER 6 — REFERRALS**1. Referrals to and from professional bodies etc**

- (1) Subject to the right of appeal under these Rules by a mediator or an ADR Practitioner and a final decision in respect of that appeal, the ADR Service shall forthwith communicate by notice in Form 9 of Schedule 2 a finding of guilt and decision on penalty by the Authority or the Board to the employer and or the professional body of the mediator or the ADR Practitioner if that person holds another profession.
- (2) Upon receipt of the communication under subrule (1), the employer or the relevant professional body of the mediator or the ADR Practitioner may take appropriate disciplinary action if it so wishes under its own governing laws or rules and the employer or relevant professional body may promptly communicate by notice in or similar to Form 10 of Schedule 2 its decision in respect of such disciplinary action to the Authority or the Board through the ADR Service.
- (3) If the mediator or ADR Practitioner who is found guilty of misconduct under these Rules is an officer of the Court, or within the employ of the NJSS, the NJSS's relevant disciplinary process shall forthwith commence based on the final decision on the guilt of the mediator or ADR Practitioner.
- (4) Subject only to the right of appeal or review, where a Court or a professional body finds a mediator or an ADR Practitioner guilty of a criminal offence or conduct that is dishonest or is otherwise conduct that amounts to a possible breach of any of the duties and responsibilities of a mediator or an ADR Practitioner as provided for in Order 4 rule 2 in particular and generally the other provisions of these Rules which brings into question the mediator or an ADR Practitioner's integrity, the mediator or ADR Practitioner shall be dealt with as if found guilty by the Authority, which shall only receive submissions on the appropriate penalty and make a decision on the appropriate penalty.
- (5) Where a mediator or ADR Practitioner who is found guilty and dealt with under these Rules is a lawyer and the Court or the ADR Service considers that the lawyer has breached their duties under Order 2 rule 10(9) or has obstructed and or acted in an unprofessional, dishonest, inappropriate or unethical manner before, during or after the conduct of a mediation, the Court or the ADR Service may refer that lawyer to the Lawyers Statutory Committee for the lawyer to be appropriately dealt with.

ORDER 7 — REVIEW OF ADR RULES

1. Review of rules

- (1) These Rules shall be reviewed as required from time to time by the Committee or as the Chief Justice may direct.
- (2) A review of these Rules shall include rules which regulate other forms of ADR.

SCHEDULE 1**REQUIREMENTS FOR THE EDUCATION, ACCREDITATION AND RENEWAL
OF ACCREDITATION OF MEDIATORS****A. Accreditation**

A person may satisfy the accreditation criteria for mediators by:

- (1) Satisfaction of Minimum Training and Education which shall consist of EITHER a process including:
 - (a) a mediation training conducted by a training team comprised of at least two instructors where the principal instructor has more than three years' experience as a mediator who has complied with the continuing accreditation requirements under the accreditation criteria and has at least three years' experience as an instructor and has assistant instructors or coaches with a ratio of one instructor or coach for every three course participants in the final coached simulation part of the training and where all coaches and instructors are accredited;
 - (b) a minimum of 38 hours in duration which may be constituted by more than one mediation training workshop provided not more than 12 months has passed between workshops, excluding the assessment process;
 - (c) involvement of each course participant in at least nine simulated mediation sessions and in at least 3 simulations each course participant performs the role of mediator;
 - (d) provision of written debriefing and coaching feedback in respect of two simulated mediations to each course participant by different members of the training team; and
 - (e) an assessment by an independent assessor as having achieved competency as a mediator.

OR

Satisfying the Council that the applicant has worked as a mediator prior to coming into operation of the accreditation criteria and has experience, training, and education that satisfies the Council that the mediator is equipped with the necessary skills, knowledge and understandings as set out in the core competencies referred to in the Code of Conduct, and who has met the continuing accreditation requirements set out below in the 24 months prior to making an application.

- (2) Qualifying by experience by satisfying the Council that the applicant:
- (a) resides in a village or tribe with specific linguistic and cultural characteristics and the mediator has specialised skills and knowledge and experience in mediation that are needed in the village or tribe in which the applicant resides; or
 - (b) comes from rural or remote community where there is difficulty in attending a mediation training course or attaining tertiary or similar qualifications and has practiced a form of mediation which is recognised and needed in the applicant's community.

B. Continuing accreditation

- (1) In addition to all other requirements that the Council may require of mediators from time to time for the purposes of renewing and maintaining the currency of their accreditation, mediators shall provide evidence of having in the last 12 months preceding their application for renewal that they have:
- (a) met all the requirements of the ADR Rules and Code; and
 - (b) conducted at least 25 hours of mediation or the particular form of ADR practiced or co-mediated or co-conducted the form of ADR for which certification is sought; and
 - (c) attended at least two continuing education programs for mediators.
- (2) These continuing accreditation requirements shall not apply to persons who have qualified by experience as mediators pursuant to Criteria A(2) above.

C. Recognition of foreign qualifications

The Council may from time to time deem the holding of a particular foreign qualification or qualifications to satisfy in all or part of the requirements of Criteria A(1) above for persons applying to be accredited as mediators, and or persons acting as coaches and instructors for the purposes of these Accreditation Criteria.

Holders of accreditation under the Australian National Mediator Accreditation Standards (NMAS) or similar as approved by the Committee shall be deemed to be so accredited for the purposes of acting as instructors and coaches.

SCHEDULE 2

FORMS

FORM 1A

ORDER FOR EXTERNAL MEDIATION

O 2 r 3(5)(a)

In the National Court)
of Justice at)
Papua New Guinea)

WS No XX OF 202..

Between:
XXX
Plaintiff

And:
XXX
Defendant

MEDIATION ORDER

THE COURT ORDERS that:

1. This matter is referred to mediation by an accredited external mediator.
2. (*Insert external mediator’s name*) who is an accredited external mediator is appointed to conduct the mediation in co-mediation with a provisionally accredited mediator assigned by the Assistant Registrar–ADR (AR-ADR) and who is notified by the AR-ADR to the parties no later than (*insert date*).
3. Each party shall forthwith pay in equal proportions (*or state how much each party is to pay*) the Court mediation services fee per Schedule 3 of the *ADR Rules 2022* and provide by email a copy of their receipt to the AR-ADR by (*insert date, to be within 7 days from today*) and deliver to the mediator the original of their receipt at the commencement of the mediation process.
4. The parties shall forthwith contact the external mediator and discuss and reach an agreement on the mediator’s fees and relevant and necessary expenses which the parties shall pay in equal proportions by (*insert date, being a date no later than 7 days from today*) into an account nominated by the external mediator.
5. The mediation conferences shall be held at (*eg, the ADR Centre, Waigani, National Capital District*) or such other venue as the parties and the mediators may by (*insert date*) mutually agree in writing.
6. The parties and if applicable their lawyers shall by (*insert date, to be within 7 days from today*) notify the AAR-ADR of their respective currently functional telephone numbers (land and mobile), email and mailing addresses and their street or village address.

7. Provided terms 3 and 4 of this Order are complied with, the mediation shall be conducted on (*insert date(s)*) or such other dates as the parties may mutually agree in writing but in any event before the date specified in term 8.
8. The mediation process shall conclude on or before close of business (*insert date, being a date not more than 2 months from today*) with a mediator's certificate similar to Form 3A, 3B, 3C or 3D in Schedule 2 of the *ADR Rules 2022*.
9. During the mediation process, each party must be represented by a person with full capacity and authority to settle the proceeding who must come prepared with the relevant and necessary instructions and materials required at mediation and negotiate in 'good faith.' Full particulars of the name and contact details of each party's authorised representative shall be given by each party to the AR-ADR by (*insert date, being a date not less than 7 days before commencement date for mediation*).
10. A failure to comply with all or any of the terms of this Order may be taken to mean lack of 'good faith' for the purposes of Order 2 rule 11 of the *ADR Rules 2022* against the defaulting party, in which event the mediator may issue a certificate of 'bad faith' in Form 3D of Schedule 2.
11. If the mediation fails to resolve the matter fully, the parties shall together with the assistance of the mediator:
 - (a) identify what meritorious legal issues, if any, are presented;
 - (b) indicate why such issues are beyond resolution by this mediation;
 - (c) confirm that such issues, after reasonable enquiry having been made by the parties and the lead mediator, are not issues which have already been determined by any Court in PNG; and
 - (d) agree and settle the relevant facts upon which such issues are presented.
12. The proceeding shall return to Court on (*insert date, being a date not more than 2 business days after the conclusion of the mediation*) whereupon the Court may endorse any agreement of the parties either with or without modification finalising the proceeding or make such orders and issue such directions as are necessary to expedite the matter to trial if not fully resolved by mediation or deal with any noncompliance of this Order.
13. The time for entry of this order is abridged to the time of settlement by the Registrar which shall take place forthwith.

ORDERED: The day of 202..

ENTERED: The day of 202..

BY THE COURT

.....
 (*Insert name of Judge or Registrar*)

FORM 1B

ORDER FOR INTERNAL MEDIATION

O 2 r 3(5)(a)

In the National Court)
of Justice at)
Papua New Guinea)

WS No XX OF 202..

Between:
XXX
Plaintiff

And:
XXX
Defendant

MEDIATION ORDER

THE COURT ORDERS that:

1. This matter is referred to mediation by an internal accredited mediator.
2. (*Insert internal mediator's name*) who is an accredited internal mediator is appointed to conduct the mediation in co-mediation with a provisionally accredited mediator assigned by the Assistant Registrar-ADR (AR-ADR) and who is notified by the AR-ADR to the parties no later than (*insert date*).
3. Each party shall forthwith pay in equal proportions (*or state how much each party is to pay*) the Court mediation services fee per Schedule 3 of the *ADR Rules 2022* and provide by facsimile or email a copy of their receipt to the AR-ADR by (*insert date, to be within 7 days from today*) and deliver to the internal mediator the original of their receipt at the commencement of the mediation process.
4. The mediation conferences shall be held at (*eg, the ADR Centre, Waigani, National Capital District*) or such other venue as the parties and the mediators may by (*insert date*) mutually agree in writing.
5. The parties and if applicable their lawyers shall by (*insert date, to be within 7 days from today*) notify the AR-ADR of their respective currently functional telephone numbers (land and mobile), email and mailing addresses and their street or village address.
6. Provided term 3 of this Order is complied with, the mediation shall be conducted on (*insert date(s)*) or such other dates as the parties may mutually agree in writing but in any event before the date specified in term 7.
7. The mediation process shall conclude on or before close of business on (*insert date, being a date not more than 2 months from today*) with a mediator's certificate in or similar to Form 3A, 3B, 3C or 3D of Schedule 2 of the *ADR Rules 2022*.

8. At mediation each party must be represented by a person whose full name and contact details must be provided within 7 days from the date of this Order to the AR-ADR and that person must:
 - (a) have full capacity and authority to settle the proceeding; and
 - (b) come prepared with the relevant and necessary instructions and materials required; and
 - (c) negotiate in ‘good faith’.
9. A failure to comply with all or any of the terms of this Order may be taken to mean lack of ‘good faith’ for the purposes of Order 2 rule 11 of the *ADR Rules 2022* against the defaulting party, in which event the mediator may issue a certificate of ‘bad faith’ in Form 3D of Schedule 2.
10. If the mediation fails to resolve the matter fully, the parties shall with the assistance of the internal mediator:
 - (a) identify what meritorious legal issues, if any, are presented;
 - (b) indicate why such issues are beyond resolution by mediation;
 - (c) confirm that such issues, after reasonable enquiry having been made by the parties and the mediator, are not issues which have already been determined by any Court in PNG; and
 - (d) agree and settle the relevant facts upon which such issues are presented.
11. The proceeding shall return to Court on (*insert date, being a date not more than 2 business days after the conclusion of the mediation*) whereupon the Court may endorse any agreement of the parties either with or without modification finalising the proceedings or make such orders and issue such directions as are necessary to expedite the matter to trial if not fully resolved by mediation or deal with any non-compliance of this Order.
12. The time for entry of this order is abridged to the time of settlement by the Registrar which shall take place forthwith.

ORDERED: The day of 202...

ENTERED: The day of 202...

BY THE COURT

.....

(Insert name of Judge or Registrar)

FORM 1C

ORDER FOR INTERNAL MEDIATION BY EXTERNAL MEDIATOR

O 2 r 3(5)(a)

In the National Court)
of Justice at)
Papua New Guinea)

WS No XX OF 202..

Between:

XXX

Plaintiff

And:

XXX

Defendant

MEDIATION ORDER

THE COURT ORDERS that:

1. This matter is referred to internal mediation by an accredited external mediator.
2. (*Insert external mediator's name*) who is an accredited external mediator is appointed to conduct the mediation as an internal mediation in co-mediation with a provisionally accredited mediator assigned by the Assistant Registrar–ADR (AR-ADR) and who is notified by the AR-ADR to the parties no later than (*insert date*).
3. Each party shall forthwith pay in equal proportions (*or state how much each party is to pay*) the Court mediation services fee per Schedule 3 of the *ADR Rules 2022* and provide by facsimile or email a copy of their receipt to the AR-ADR by (*insert date, to be within 7 days from today*) and deliver to the mediator the original of their receipt at the commencement of the mediation process.
4. In addition to term 3, the parties are responsible for all costs of the mediation inclusive of the mediator's fees but those costs will not become payable unless term 5 of this Order applies.
5. Should the matter resolve in favour of any party that is impecunious, the parties shall bear the costs of the mediation inclusive of the external mediator's fees, travel and related costs in equal shares unless the parties otherwise agree or the Court otherwise directs.
6. The mediation conferences shall be held at (*eg, the ADR Centre, Waigani, National Capital District*) or such other venue as the parties and the mediators may by (*insert date*) mutually agree in writing.
7. The parties and if applicable their lawyers shall by (*insert date, to be within 7 days from today*) notify the AR-ADR of their respective currently functional telephone numbers (land and mobile), email and mailing addresses and their street or village address.

8. Provided terms 3 and 4 of this Order are complied with, the mediation shall be conducted on (*insert date(s)*) or such other dates as the parties may mutually agree in writing but in any event before the date specified in term 9.
9. The mediation process shall conclude on or before close of business (*insert date, being a date not more than 2 months from today*) with a mediator's certificate similar to Form 3A, 3B, 3C or 3D of Schedule 2 of the *ADR Rules 2022*.
10. At mediation each party must be represented by a person whose full name and contact details must be provided within 7 days from the date of this Order to the AR-ADR and that person must:
 - (a) have full capacity and authority to settle the proceeding; and
 - (b) come prepared with the relevant and necessary instructions and materials required; and
 - (c) negotiate in 'good faith'.
11. A failure to comply with all or any of the terms of this Order may be taken to mean lack of 'good faith' for the purposes of Order 2 rule 11 of the *ADR Rules 2022* against the defaulting party, in which event the mediator may issue a certificate of 'bad faith' in Form 3D of Schedule 2.
12. If the mediation fails to resolve the matter fully, the parties shall together with the assistance of the mediator:
 - (a) identify what meritorious legal issues, if any, are presented;
 - (b) indicate why such issues are beyond resolution by this mediation;
 - (c) confirm that such issues, after reasonable enquiry having been made by the parties and the mediator, are not issues which have already been determined by any Court in PNG; and
 - (d) agree and settle the relevant facts upon which such issues are presented.
13. The proceeding shall return to Court on (*insert date, being a date not more than 2 business days after the conclusion of the mediation*) whereupon the Court may endorse any agreement of the parties either with or without modification finalising the proceeding or make such orders and issue such directions as are necessary to expedite the matter to trial if not fully resolved by mediation or deal with any non-compliance of this Order.
14. The time for entry of this order is abridged to the time of settlement by the Registrar which shall take place forthwith.

ORDERED: The day of 202...

ENTERED: The day of 202...

BY THE COURT

.....
 (*Insert name of Judge or Registrar*)

FORM 1D

PRELIMINARY ORDER FOR MEDIATION

O 2 r (5)(b)

In the National Court)
of Justice at)
Papua New Guinea)

WS No XX OF 202..

Between:
XXX
Plaintiff

And:
XXX
Defendant

MEDIATION ORDER

THE COURT ORDERS that:

- 1. This matter is ordered to mediation by an accredited (external/internal) mediator.
2. The parties shall return to Court on (insert date & time) at which time the parties shall come ready to produce to the Court a draft consent order based on the pro forma Order in (insert appropriate order, ie, Form 1A, Form 1B or Form 1C) of Schedule 2 of the ADR Rules 2022, in default of which the Court shall issue such further orders or directions as may be necessary (based on the pro forma draft order).

Alternatively

- 2. This matter is referred to the Judge Administrator ADR for such further orders or directions as may be necessary to be issued for the conduct and conclusion of the mediation.
3. (Costs in the cause)
4. (Time for entry of order abridged)

ORDERED: The day of 202..
ENTERED: The day of 202..

BY THE COURT

(Insert name of Judge or Registrar)

FORM 2

PROGRESS REPORT ON MEDIATION

O 2 r 9(5)

In the National Court)
of Justice at)
Papua New Guinea)

WS No XX OF 202..

Between:

XXX

Plaintiff

And:

XXX

Defendant

PROGRESS REPORT ON MEDIATION

I, (insert mediator's name), report to the Court and the ADR Service that:

- 1. Pursuant to the principal mediation order made in this proceeding on (insert date of principal mediation order), the relevant parties have participated in a mediation before me on (insert date(s)) and the mediation is still in progress.
2. The mediation has been temporarily adjourned and has been scheduled with the agreement of the relevant parties to resume before me on (insert date & time).
3. The mediation is unlikely to be concluded by (insert date stipulated in principal mediation order for the conclusion of the mediation), which is the date for the conclusion of the mediation stipulated in term ... (insert the number of the term contained in the mediation order by which date the mediation has been directed to be concluded) of the principal mediation order.
4. The reason(s) for the adjournment of the mediation is/are (insert reason(s) for adjournment of mediation).
5. The parties will return to inform the Court on (insert the date stipulated in the principal mediation order for the return of the matter before the Court) of the status of the mediation and to seek such variation of the principal mediation order or such other orders or directions as the circumstances of the mediation may require.
6. This report is issued by me with the agreement of the relevant parties after my consultation with them.

.....
(Print name of mediator)
Accredited Mediator

Dated: 202...



FORM 3A

MEDIATOR'S CERTIFICATE – FULL SETTLEMENT

O 2 r 9(7)

In the National Court)
of Justice at)
Papua New Guinea)

WS No XX OF 202..

Between:
XXX
Plaintiff

And:
XXX
Defendant

MEDIATOR'S CERTIFICATE - FULL SETTLEMENT

I, (*insert mediator's name*), certify that:

1. The parties (*or if not all, insert names of participating parties*) participated in a mediation before me on (*insert date(s)*) which resulted in a settlement of all of the issues in dispute between them in this proceeding.
2. The parties will present draft consent orders finalising this proceeding based on their settlement.
3. I am a Mediator accredited in accordance with the PNG National Accreditation Standards.

.....
(*Print name of mediator*)
Accredited Mediator

Dated: 202...

FORM 3B

MEDIATOR'S CERTIFICATE – PARTIAL SETTLEMENT

O 2 r 9(7)

In the National Court)
of Justice at)
Papua New Guinea)

WS No XX OF 202..

Between:
XXX
Plaintiff

And:
XXX

Defendant

MEDIATOR’S CERTIFICATE – PARTIAL SETTLEMENT

I, *(insert mediator’s name)*, certify that:

- 1. The parties *(or if not all, insert names of participating parties)* participated in a mediation before me on *(insert date(s))* which resulted in a settlement of the following issues:

(Insert summary of resolved issues)

(a)

(b)

...

- 2. The parties were not able to resolve the following issues, which I certify are meritorious issues for the Court to consider and determine:

(Insert summary of unresolved issues)

(a)

(b)

....

- 3. The parties agree that the following are the relevant facts giving rise to these issues:

(a)

(b)

- 4. I am a Mediator accredited in accordance with the PNG National Accreditation Standards.

.....

(Print name of mediator)

Accredited Mediator

Dated: 202..

FORM 3C

MEDIATOR'S CERTIFICATE – NO SETTLEMENT DESPITE GOOD FAITH

O 2 r 9(7)

In the National Court)
of Justice at)
Papua New Guinea)

WS No XX OF 202..

Between:
XXX
Plaintiff

And:
XXX
Defendant

MEDIATOR’S CERTIFICATE – NO SETTLEMENT DESPITE GOOD FAITH

I, *(insert mediator’s name)*, certify that:

- 1. The parties *(or if not all, insert names of participating parties)* participated in a mediation before me on *(insert date(s))* in good faith but were not able to settle the matter despite their best efforts and the following meritorious issues are presented for the Court to consider and determine:

(Insert summary of unresolved issues)

(a)

(b)

....

- 2. The parties have agreed that the following facts are relevant to the meritorious issues:

(Insert agreed facts)

(a)

(b)

....

- 3. I am a Mediator accredited in accordance with the PNG National Accreditation Standards.

.....

(Print name of mediator)

Accredited Mediator

Dated: 202...

FORM 3D

MEDIATOR'S CERTIFICATE - NO SETTLEMENT DUE TO BAD FAITH

O 2 r 9(7), 11(1)

In the National Court)
of Justice at)
Papua New Guinea)

WS No XX OF 202..

Between:

XXX

Plaintiff

And:

XXX

Defendant

MEDIATOR’S CERTIFICATE – NO SETTLEMENT DUE TO BAD FAITH

I, *(insert mediator’s name)*, certify that:

1. The parties (*or if not all, insert names of participating parties*) participated in a mediation before me on (*insert date(s)*) but (*insert name(s) of defaulting party/parties*) acted in bad faith by reason of which the mediation was terminated without a settlement of any of the issues in the proceeding.

2. The facts and circumstances forming the basis for this bad faith certificate are:
 - (a)
 - (b)
 -

3. The issues presented for the Court to consider and determine are:
 - (a)
 - (b)
 -

4. I am a Mediator accredited in accordance with the PNG National Accreditation Standards.

.....
 (*Print name of mediator*)
 Accredited Mediator

Dated: 202..

FORM 4
REGISTER OF ACCREDITED MEDIATORS

O 3 r 8(1)

PAPUA NEW GUINEA

ADR RULES 2022

REGISTER OF ACCREDITED MEDIATORS

Name:

Surname

Given Names

Date of Accreditation: 20...

Place of Accreditation:

Signature of Accredited Mediator:

Business Address:

Email:@.....

Qualifications – degrees
.....
.....

Qualifications – other:
.....
.....

Membership of professional bodies:
.....
.....

Fee paid: Receipt No.

File No:

FORM 5A

UNRESTRICTED MEDIATOR PRACTISING CERTIFICATE

O 3 r 11(2)(a)

PAPUA NEW GUINEA

ADR RULES 2022

**UNRESTRICTED MEDIATOR PRACTISING CERTIFICATE
FOR PERIOD COMMENCING ON (*insert commencement date*)
AND ENDING 31 DECEMBER 202..**

Pursuant to the *ADR Rules 2022*, the Registrar of the National Court hereby issues an Unrestricted Mediator Practising Certificate entitling

(Insert name of accredited mediator)

to practise as an accredited mediator for the above period.

Dated this day of 202..

.....
(Insert full name of Registrar)
REGISTRAR

FORM 5B

RESTRICTED MEDIATOR PRACTISING CERTIFICATE

O 3 r 11(2)(b)

ADR RULES 2022

**RESTRICTED MEDIATOR PRACTISING CERTIFICATE
FOR PERIOD COMMENCING ON (*insert commencement date*)
AND ENDING 31 DECEMBER 202..**

Pursuant to the *ADR Rules 2022*, the Registrar of the National Court hereby issues a Restricted Mediator Practising Certificate entitling

(Insert name of accredited mediator)

to practise as an accredited mediator for the above period subject to the following restrictions:

(For example)

1. To practise only as a co-mediator with an already PNG Accredited Mediator holding a current Unrestricted Mediator Practising Certificate.
2. Not to charge fees for any co-mediation.
3. Not to hold out as being a PNG Accredited Mediator holding an Unrestricted Mediator Practising Certificate or a Mediator fully accredited under the *ADR Rules 2022*.

Dated this day of 202..

.....
(Insert full name of Registrar)
REGISTRAR

FORM 6

**APPLICATION FOR UNRESTRICTED/RESTRICTED
MEDIATOR PRACTISING CERTIFICATE
OR
ADR PRACTITIONER PRACTISING CERTIFICATE**

O 3 r 12(1)

PAPUA NEW GUINEA

ADR RULES 2022

**APPLICATION FOR UNRESTRICTED/RESTRICTED MEDIATOR OR ADR
PRACTITIONER PRACTISING CERTIFICATE**

**FOR PERIOD COMMENCING ON *(insert commencement date)*
AND ENDING 31 DECEMBER 202..**

TO: Chair of the ADR Committee
C/- ADR Service of the National Court
PO Box 7018
Boroko NCD 121

Email:@pngjudiciary.gov.pg
(Insert email address of current Secretary of ADR Committee)

NAME:
(Mr/Mrs/Ms/Dr) (Surname) (Other Names)

E-mail address:@.....
Mobile number:
Other phone number:
Postal Address:
Physical Address:
.....
.....

1. Category of practising certificate

I make application to the ADR Committee for an Unrestricted/Restricted *(delete one)* Mediator Practising Certificate *or* ADR Practitioner Practising Certificate *(delete one)*

2. Applicant for Unrestricted Practising Certificate *(delete this paragraph if not applicable)*.

I DECLARE as follows:

- (a) I am a mediator/ADR practitioner *(delete one)* duly accredited by the Mediator Accreditation Council. Attached is a true copy of my Certificate of Accreditation.
- (b) I am the holder of, or I am entitled to hold, a current Restricted Mediator Practising Certificate *or* a current Restricted ADR Practitioner Practising Certificate *(delete one)*, a true copy of which Certificate if already issued is attached.
- (c) I have conducted a minimum of 5 co-mediations in the 2-year period prior to making this Application, with at least one of those co-mediations having been conducted by me as lead mediator. Attached is documentary evidence of:
 - (i) those 5 or more co-mediations;
 - (ii) support and endorsement of this Application from a mediator holding, or who is entitled to hold, an Unrestricted Mediator Practising Certificate with whom I have co-mediated.

or

- (c) I have on a minimum of 5 occasions in the 2-year period prior to making this Application conducted a form of ADR, and that on at least one of those occasions I was the lead ADR facilitator. Attached is documentary evidence of:

- (i) those 5 or more occasions on which I conducted a form of ADR;
- (ii) support and endorsement of this Application from an ADR practitioner holding, or who is entitled to hold, an Unrestricted Mediator Practising Certificate with whom I have co-facilitated a form of ADR.

or

- (c) I have previously produced to the ADR Committee satisfactory documentary evidence that I have conducted a minimum of 5 co-mediations with at least one of those co-mediations having been conducted by me as lead mediator *or* that I have conducted a form of ADR on a minimum of 5 occasions and that on at least one of those occasions I was the lead ADR facilitator (*delete one*).

(Delete whichever of these alternatives for subparagraph (c) is not applicable)

- (d) As an accredited mediator I have complied with, and will continue to comply with, the Code of Professional Conduct for Mediators as provided for under Order 4 of the *ADR Rules 2022*.

or

- (d) As an accredited ADR practitioner I will comply with the Code of Professional Conduct for ADR Practitioners.

- (e) Attached is documentary evidence that I have in the 2-year period prior to making this Application participated in at least one mediator educational training *or* one other form of ADR educational training (*delete one*) by way of attendance at a conference, workshop or training program for mediators *or* ADR practitioners (*delete one*).

3. Applicant for Restricted Practising Certificate (*delete this paragraph if not applicable*).

I DECLARE as follows:

- (a) I am a mediator/ADR practitioner (*delete one*) duly accredited by the Mediator Accreditation Council. Attached is a true copy of my Certificate of Accreditation.
- (b) I undertake to practise only as a co-mediator with an accredited mediator holding, or entitled to hold, a current Unrestricted Mediator Practising Certificate *or* I undertake to only practice as a co-facilitator with an accredited ADR Practitioners holding, or entitled to hold, a current Unrestricted ADR Practitioner Practising Certificate (*delete one*).
- (c) I will not charge fees for my co-mediation services *or* ADR co-facilitation services (*delete one*).
- (d) I will not hold myself out as being an accredited mediator holding an Unrestricted Mediator Practising Certificate *or* an accredited ADR practitioner holding an Unrestricted ADR Practising Certificate (*delete one*).
- (e) As an accredited mediator I have complied with, and will continue to comply with, the Code of Professional Conduct for Mediators as provided for under Order 4 of the *ADR Rules 2022*.

or

- (e) As an accredited ADR practitioner I will comply with the Code of Professional Conduct for ADR Practitioners.
- (f) Attached is documentary evidence that I have in the 2-year period prior to making this Application participated in at least one mediator educational training *or* one other form of ADR educational training [*delete one*] by way of attendance at a conference, workshop or training program for mediators *or* ADR practitioners (*delete one*).
- (g) I will faithfully abide by all requirements as the ADR Committee shall decide are applicable to any Restricted Practising Certificate to be issued to me.

4. Attached is the receipt or other proof of payment of the fee prescribed in Schedule 5 of the *ADR Rules 2022* for this application.¹

(Delete this paragraph if the Applicant is an internal mediator or ADR Practitioner employed by the National Court, National Judicial Staff Service or the Independent State of Papua New Guinea who is exempt under Order 3 rule 12(3) of ADR Rules 2022 from the requirement to pay prescribed fee.)

Dated at this day of..... 202..

Signed:
(Signature of Applicant)

FORM 7

COMPLAINT AGAINST MEDIATOR

O 5 r 2(2)

In the National Court)
of Justice at Waigani)
Papua New Guinea)

WS No XX OF 202..

Between:
XXX
Plaintiff

And:
XXX
Defendant

COMPLAINT AGAINST MEDIATOR

Full name of Complainant:.....

Contact details of Complainant:

Email:@.....

¹ Fee for Unrestricted Practising Certificate for Mediator or ADR Practitioner: K200
Fee for Restricted Practising Certificate for Mediator or ADR Practitioner: K150

Mobile number:
Other phone number:
Postal address:
Street/Village address:

Date of Mediation Order: day of 202..

Made by Justice:

Name of Mediator(s) the subject of this Complaint:

Describe nature of Complaint:

.....
.....
.....
.....
.....
.....
.....
.....
.....

Notes:

- 1. Full particulars of this Complaint are required. Continue on separate sheet if necessary.
- 2. Attach photocopies of any documentation relevant to this Complaint.

Dated at this day of 202..

..... (Signature of Complainant)

..... (Print name of Complainant)

For ADR SERVICE use:

Received by: (Signature of receiving officer)

..... (Print name of receiving officer)

Date of receipt of this Complaint: This day of 202..

FORM 8

**NOTICE OF APPEAL AGAINST DECISION OF
ACCREDITATION COUNCIL OR COMPLAINTS AUTHORITY**

O 5 r 15(2)

PAPUA NEW GUINEA

ADR RULES 2022

APPEAL NO of 202..

IN THE MATTER OF AN APPEAL
under Order 5 rule 15 of the *ADR Rules*

A.B.
Appellant

**NOTICE OF APPEAL
AGAINST DECISION OF ACCREDITATION COUNCIL
OR COMPLAINTS AUTHORITY**

TO: APPEALS BOARD
established under Order 5 rule 11(1) of the *ADR Rules 2022*

1. THE APPELLANT appeals from the whole/a part (*if a part specify part*) of the decision of the Accreditation Council/Complaints Authority (*delete one*) made on (*specify date*).

2. TERMS OF DECISION APPEALED AGAINST:
(*Set out the terms or substance of the decision appealed against*)
.....
.....

3. GROUNDS:
(*Specify by paragraph each particular ground of this Appeal*)

(1)
(2)
(3)

4. PARTICULARS OF GROUNDS:
(*Specify full particulars by paragraph in support of above grounds of Appeal*)

(1)
(2)
(3)

5. PARTICULARS OF APPELLANT:
Full name of APPELLANT:
E-mail address:
Mobile number:

.....
Other phone number:
Postal Address:
Physical Address:
.....

Dated at this day of..... 202..

Signed: (To be signed by the Appellant or lawyer for the Appellant)
..... (Print name of person signing, and if signed by lawyer for the Appellant, all necessary contact details for that Lawyer)
.....

Notes:

- 1. Full particulars of this appeal are required. Continue on separate sheet if necessary.
- 2. Attach photocopies of any documentation relevant to this appeal, including where possible a true copy of the decision the subject of this appeal.
- 3. This notice of appeal is to be lodged with the Appeals Board by delivery in person or by email to the Secretary of the Appeals Board who is the Assistant Registrar – ADR, ADR Service, National Court of Justice of Papua New Guinea at Waigani, NCD.
- 4. This notice of appeal must be lodged with the substantive or acting Secretary of the Appeals Board within 21 days after the date of the subject decision (excluding the actual date of decision). No notice of appeal will be accepted as valid by the Appeals Board if lodged outside of that time limit.

For ADR SERVICE use:

Received by: (Signature of receiving officer)
..... (Print name of receiving officer)

Date of lodgement of this Notice of Appeal: This day of 202..

FORM 9

**NOTICE OF DECISION OF COMPLAINTS AUTHORITY OR APPEALS BOARD
TO EMPLOYER OF MEDIATOR
AND OR TO MEDIATOR'S PROFESSIONAL BODY**

O 6 r 1(1)

PAPUA NEW GUINEA

ADR RULES 2022

**NOTICE OF DECISION OF COMPLAINTS AUTHORITY OR APPEALS BOARD
TO
EMPLOYER OF MEDIATOR AND OR TO MEDIATOR'S PROFESSIONAL BODY**

TO: (*Insert name of Employer of Mediator or name of Mediator's Professional Body*)
..... (*Insert postal address of Employer or Professional Body*)
..... (*Insert email address of Employer or Professional Body*)

TAKE NOTICE that on the day of 202.. the Complaints Authority/Appeals Board (*delete one*) established under the *ADR Rules 202*) of the National Court of Justice of Papua New Guinea made the following Decision in connection with the Complaint/Appeal of (*insert full name of Complainant/Appellant*):

DECISION:
(*Insert full text or effect of decision*)
.....
.....
.....

A true copy of the Decision is annexed to this Notice.

..... (*Insert name of Employer of Mediator or name of Mediator's Professional Body*) is requested, under these Rules, to promptly communicate to the Complaints Authority/Appeals Board (*delete one*) any separate decision which may be taken by (*insert name of Employer of Mediator or name of Mediator's Professional Body*) under its own governing laws, rules or policies in respect of any disciplinary or other action taken against the Complainant/Appellant (*delete one*) arising from or connected with the above Decision taken by the Complaints Authority/Appeal Board (*delete one*).

Dated at Waigani this day of 202..

Signed: (*Signature of Complaints Authority/Chair of Appeals Board*)
..... (*Print name of person signing*)
Complaints Authority/Chair of the Appeals Board (*Delete one*)

Notes:

1. *The text of Order 6 rule 1(1) and (2) of the ADR Rules 2022 is set out below:*

“(1) Subject to the right of appeal under these Rules by a mediator or an ADR Practitioner and a final decision in respect of that appeal, the ADR Service shall forthwith communicate by notice in Form 9 of Schedule 2 a finding of guilt and decision on penalty by the Authority or the Board to the employer and or the professional body of the mediator or the ADR Practitioner if that person holds another profession.

(2) Upon receipt of the communication under subrule (1), the employer or the relevant professional body of the mediator or the ADR Practitioner may take appropriate disciplinary action if it so wishes under its own governing laws or rules and the employer or relevant professional body may promptly communicate by notice in or similar to Form 10 of Schedule 2 its decision in respect of such disciplinary action to the Authority or the Board through the ADR Service.”

2. *A copy of Form 10 of Schedule 2 of the ADR Rules 2022 is attached to this notification.*

FORM 10

**NOTICE OF DECISION OF MEDIATOR'S EMPLOYER
OR MEDIATOR'S PROFESSIONAL BODY
TO COMPLAINTS AUTHORITY OR APPEALS BOARD
ESTABLISHED UNDER ADR RULES 2022**

O 6 r 1(2)

PAPUA NEW GUINEA

ADR RULES 2022

**NOTICE OF DECISION OF EMPLOYER OR MEDIATOR'S
PROFESSIONAL BODY TO COMPLAINTS AUTHORITY OR APPEALS
BOARD ESTABLISHED UNDER ADR RULES 2022**

TO: COMPLAINTS AUTHORITY/APPEALS BOARD (*delete one*)
Established under the *ADR Rules 2022* of the National Court of Justice of Papua New Guinea
C/- Secretary of the Complaints Authority/Secretary of the Appeals Board (*delete one*),
ADR Service,
National Court of Justice
Waigani, NCD

Email:@pngjudiciary.gov.pg
(*Insert email address of current Secretary*)

TAKE NOTICE that on the day of 202..
..... (*insert name of Employer or Professional Body
of Mediator*) took the following disciplinary action against
(*Insert full name of Complainant/Appellant*) arising from or in connection with the attached
Decision of the Complaints Authority/Appels Board dated the day of

..... 20... relating to (*insert full name of Complainant/Appellant*).

DISCIPLINARY ACTION TAKEN:

(*Insert full description of disciplinary action taken*)

.....

A true copy of the determination of disciplinary action taken by (*insert name of Employer or Professional Body of Mediator*) is annexed to this Notice. This determination was taken pursuant to or in accordance with (*insert particulars of relevant law, rules or policies under which the determination of the Employer or Professional Body of the Mediator was taken*)

.....

Dated at this Day of 202...

Signed:

(*Signature of authorised representative of Employer/Professional Body*)

..... (*Print name of person signing*)

..... (*Print capacity of person signing*)

..... (*Insert name, postal address and email address of Employer/Professional Body*)

SCHEDULE 3

ADR SERVICE PROCESSING FEES

O 2 r 6(1)

(1) The following processing fees are payable prior to the commencement of any mediation where the estimated value of the claim is worth:

	<u>K10,001 – K50,000</u>	<u>In excess of K50,000.00</u>
(a) first day	K400	K600
(b) each additional day	K400	K600

(2) The above fees may be varied from time to time by the Chief Justice in consultation with the Judges.

(3) If a mediation exceeds its original estimated duration, the Court may on application by a party decide if additional fees are to be paid by the parties or by a particular party or

particular parties.

- (4) Where the State is a party to a mediation, it is exempt from payment of the processing fees.
-

SCHEDULE 4

FEES FOR PRACTISING CERTIFICATES

O 3 r 11(1)

The following fees are payable for:

- | | |
|--|------|
| 1. Unrestricted Practising Certificate for Mediator: | K200 |
| 2. Unrestricted Practising Certificate for ADR Practitioner: | K200 |
| 3. Restricted Practising Certificate for Mediator: | K150 |
| 4. Restricted Practising Certificate for ADR Practitioner: | K150 |
-

SCHEDULE 5

COMPLAINTS FILING FEE

O 5 r 2(3)

1. The complaints filing fee payable is fixed at K50 which shall be paid to Consolidated Revenue for the credit of the ADR Service and proof of payment provided to the Assistant Registrar ADR.
 2. The above fee may be varied from time to time by the Chief Justice in consultation with the Judges.
-