

SAMOA

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2007, No. 30

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

[21st November 2007]

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

**PART I
PRELIMINARY**

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

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

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

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

“Alternative Dispute Resolution” means any process used to resolve disputes between parties in civil and criminal proceedings which is outside the usual Court-based litigation model, and includes processes of mediation, arbitration, reconciliation and conciliation applied in accordance with this Act;

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

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

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

“Mediation session” means a meeting between people in dispute and a mediator for the purpose of resolving the dispute by mediation, and includes anything done for the purpose of –

(a) arranging the meeting (whether or not successfully);

or

(b) following up anything raised in the meeting.

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

“Reconciliation” means any process of alternative dispute resolution applied by the Courts to promote reconciliation or conciliation in accordance with Part V.

PART II
ALTERNATIVE DISPUTE RESOLUTION
PROCEDURES

3. Objectives of this Part - The objectives of this Part are to -

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

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

- (a) compelling the attendance of any witness or the production of any evidence at the trial;
- (b) compelling the provision by the prosecution to the defence of any briefs of evidence, copies of documents or any other matter which should fairly be provided to enable a proper preparation of the defence case;
- (c) a challenge to the use of any report or other evidence that may unfairly prejudice the defence cases;
- (d) a challenge to the validity of the charge, complaint or information as disclosing no offence under the law;
- (e) a challenge to the proceedings on the grounds of the breach of any constitutional right of the accused person, or any applicable human rights issue;
- (f) any matter concerning the giving of an alibi notice and the information to be provided in such a notice; or
- (g) the application of any alternative dispute resolution procedure in accordance with this Act.

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

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

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

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

(2) The Regulations made under sub-section (1) may make provision for –

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

6. Power of Courts in the absence of Regulations-(1)

Nothing in section 5 shall prevent a Court from adopting and applying procedures for pre-trial conferences as a Court sees fit.

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

**PART III
MEDIATION PROCEDURES**

7. Power of Courts to refer parties to mediation-(1)

The Court may refer parties to a dispute to attend mediation prior to or during the hearing of any civil matter in dispute.

(2) Without limiting the generality of subsection (1), the Court may refer a matter to mediation if -

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

(c) both parties voluntarily agree to mediation.

8. Confidential information-(1) A party to a dispute or person who is a mediator shall not disclose any information obtained in a mediation session.

(2) This section does not apply if -

- (a) the disclosure is required by law;
- (b) the disclosure is made with the consent of the parties; or
- (c) the party to a dispute or mediator believes on reasonable grounds that -
 - (i) a person's life, health or property is under serious and imminent threat and the disclosure is necessary to avert, or mitigate the consequences of, its realisation; or
 - (ii) the disclosure is necessary to report to the appropriate authority the commission of an offence or prevent the likely commission of an offence.

(3) Any party to a dispute or mediator who fails to comply with the confidentiality requirement imposed by this section commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

9. Protection from defamation - The same privilege in relation to defamation as exists in relation to judicial proceedings shall apply to -

- (a) all mediation sessions undertaken in accordance with this Act on the order of a Court; and
- (b) all documents or other materials -
 - (i) produced at a mediation session; or
 - (ii) given to a mediator for the purpose of arranging or conducting a mediation session.

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

11. Admissibility of evidence - Evidence of -

- (a) a communication made in a mediation session; or
- (b) a document, whether delivered or not, prepared -
 - (i) for the purposes of a mediation session;
 - (ii) in the course of a mediation session;
 - (iii) pursuant to a decision taken or undertaking given in a mediation session;

is not admissible in any subsequent Court proceedings unless disclosure is required by law.

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

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

13. Consent Orders - The parties to a mediation undertaken in accordance with this Act may jointly apply to the Court in which the proceedings have been issued to make consent orders to formalise any settlement or agreement that has been reached by the parties through mediation.

PART IV ARBITRATION

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

**PART V
RECONCILIATION**

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

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

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

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

(3) A Court shall only proceed in accordance with subsection (2) if it is satisfied that it is in the interests of any aggrieved party to proceed in such a manner, and in any case involving domestic violence the Court shall ensure that the victim of the violence does not submit to any proceedings being undertaken in accordance with this section by reason of pressure being exerted in any form.

(4) Upon proceeding in accordance with this section the Court may then -

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

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

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

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

PART VI MISCELLANEOUS

16. Regulations-(1) The Head of State, acting on the advice of Cabinet, may from time to time make such regulations as are necessary or expedient for giving full effect to the provisions of this Act and to meet the objectives stated in section 4.

(2) Without limiting the generality of the power given in subsection (1), regulations may be made in relation to -

- (a) the training, accreditation and registration of qualified mediators;
- (b) prescribing procedures and powers to be applied by mediators in mediation sessions;
- (c) the powers of Court officers to conduct mediation sessions, or to perform any role or power in relation to them;
- (d) prescribing fees for mediators for work undertaken in mediation sessions; and
- (e) powers of the Court to require parties to undertake any alternative dispute resolution procedures ordered in accordance with the provisions of this Act.

(3) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units or imprisonment for a term not exceeding three (3) months for offences against the regulations.

**The Alternative Dispute Resolution Act 2007 is administered by
the Ministry of Justice and Courts Administration**