

Industry Concerned about New Mediation Rule

The Dispute Settlement Accreditation Council (DiSAC), the mediation standard setting and accreditation body for the South African mediation industry, believes the mediation rule promulgated by the government to introduce court aligned mediation falls far short of the requirements of the civil justice system.

Spokesperson, Khanya Motshabi, said 'the objective of affording accessible and quality justice for all, stated in the rule, seems unlikely to be achieved by the rule in its present form'.

'While we welcome any institutional support for mediation, and commend and appreciate this new mediation initiative, the current rule has shortcomings that raise serious concern'.

DiSAC said among the principal shortcomings, was that the rule offered no incentive for using mediation and no consequence for not doing so.

At the same time, DiSAC said the rule was worryingly silent on a number of essential aspects. Motshabi referred to three other primary failings of the rules: 'the formalistic nature of the proposed procedure; the omission to deal with the costs of mediation; and the absence of quality monitoring of the process are gravely serious. This begs the question whether this rule will produce a mediation process that is of acceptable standard. The industry is concerned that getting it wrong will do more harm than good for the development of mediation and the expansion of accessible, quality access to justice'.

DiSAC called on the government to address these concerns before implementing the rule.

'The rule was previously published for comment, but despite DiSAC raising a range of concerns, the government seems to have proceeded without addressing these vital issues', said Motshabi. He reiterated that DiSAC remained more than willing to work with the government to refine the way court aligned mediation is introduced.

'Though the government has engaged with DiSAC with regard to the professional qualification and practice standards for mediators envisaged under the rule, it still remains unclear what standard will be adopted', said Motshabi. 'It is critically important that the government aligns these standards and procedures with generally accepted international best practice standards'. The South African mediation industry has already adopted the professional qualification and practice standards prescribed by DiSAC, based in on comparative experience and on the work of the International Mediation Institute. It remains to be seen if the government will follow suit'.

Motshabi concluded by stating that there was substantial experience and know-how in the mediation industry in South Africa. He said DiSAC hoped that the government would use some of the existing capacity and expertise in developing court aligned mediation.

'DiSAC is confident that if the industry and the government work together on the court aligned mediation initiative, we could to develop a world class court aligned mediation industry for South Africa. The alternative – the failed introduction of mediation – is too awful to contemplate. Based on international experience, our fear is that this alternative would cost the country up to twenty years of progress and sacrifice the worthy objectives related to the delivery of accessible, quality justice'.

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DiSAC

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DiSAC was established 5 March 2010 as a voluntary industry body designed to create a uniform system of practice requirements and mediator accreditation standards for the civil and commercial mediation sector, and thus provide assurance on the quality of mediation offered in South Africa.

A number of organisations have either collaborated in developing these accreditation and practice standards and/ or apply them in practice. The organisations include the Arbitration Association of South Africa, LEAD (the legal education division of the Law Society of SA), Tokiso Dispute Settlement, Equillore Group, Conflict Dynamics, the Royal Institute of Chartered Surveyors and the Africa Centre for Dispute Settlement, the Mediation Company, Master Mediators and the Law@work: Professional Development Project, University of Cape Town.

Web address: www.usb.ac.za/disputesettlement/dispute_settlement_accreditation_council.