



COMMENTS ON THE ACCREDITATION NORMS AND STANDARDS FOR MEDIATORS

(SUBMITTED IN TERMS OF NOTICE 598 OF 2014)

Prepared and submitted by

The South African Dispute Settlement Accreditation Council [“DiSAC”]

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1 Introduction

1.1 DiSAC

The Dispute Settlement Accreditation Council [‘DiSAC’] is a voluntary Industry Body that aims to provide a uniform system of dispute resolution practitioner accreditation, and aims to represent the collective view of the dispute settlement industry in South Africa. DiSAC was officially launched in March 2010.

DiSAC appreciates the opportunity to comment on the draft accreditation standards. The views expressed here arise from our cumulative experience of training, coaching, assessing and managing mediators and administering and conducting dispute resolution processes, and from practice in the field of mediation.

We trust that our contribution will enrich the process of deliberation about the Rules.

These comments represent the views of the Dispute Settlement Accreditation Council (“DiSAC”). These comments in addition have the express support of the following members of DiSAC:

- Africa Centre for Dispute Settlement, University of Stellenbosch Business School
- Tokiso Dispute Settlement (Pty) Ltd
- Equillore Group Limited
- Association of Arbitrators, Southern Africa
- Royal Institution of Chartered Surveyors SA
- Conflict Dynamics
- Arbitration Foundation of South Africa (AFSA)
- The Mediation Company.

DiSAC will appreciate the opportunity to engage in discussions on the various issues raised in these comments.

1.2 Contact details

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2 The Comments

2.1 General Comment

Subject to the specific important issues raised below, DiSAC commends the Department on the draft standards. The document broadly reflects the accepted industry standards that have been adopted in South Africa and Internationally.

2.2 Assessment of Students as a Requirement

The draft standard does not stipulate that competency of students attending mediation training needs to be assessed and reported on.

The intention can not be that students need merely present a certificate of attendance.

The training requirement is set to ensure that people with the requisite skills are allowed to do mediation. Those skills therefore need to be assessed at the end of the training, and the training provider should stipulate whether or not the student meets the necessary skills requirements.

Such assessment should also contain some independent evaluation that is in addition to the persons training the candidates, so as to ensure objectivity in the assessment.

Most of the current 40 hour training courses offered in South Africa do provide such an assessment.

We therefore recommend that the draft standard be amended to make this an explicit requirement.

2.3 Accreditation of Training Providers

The draft standard places string reliance and emphasis on the role of training providers.

There is no indication in the draft standard of what qualifies an institution to be a training provider. Without an explicit requirement in this regard, the door is open for any institution (with or without the necessary resources) to call itself a training provider for purposes of this draft standard.

It is suggested that the Department should consider a mechanism that is able to assess and certify the credibility of potential service providers. This will ensure that only accredited service providers are able to train for purposes of this Standard.

2.4 Practice Standards/Norms, and the Monitoring thereof

The draft standard includes broad norms and guidelines as to the practice requirements that mediators are subject to. DiSAC supports these.

The issue of concern is that the draft standard provides no clear indication of how mediators are to be monitored in their compliance with these norms and standards.

Unfortunately practice norms and guidelines have very little value if there is no system in place to monitor them. Normally such a system will include:

- Affiliation with an organization that has monitoring capability

- Formal subjection or consent by the mediator to the code of conduct / practice norms, which includes subjection to the disciplinary processes of that organization
- A complaints process that is accessible to members of the public and that activates the disciplinary process; and
- Regular review of affiliation of mediators, based on their conduct.

Without ALL of these mechanisms, there is no effective practice monitoring of mediators.

The draft standard (sect 1(1)(c)) requires that *“every applicant must be accredited by and be affiliated to an institution which offers a mediation training course consisting of course content and contact training as stipulated in these standards approved by the Minister”*.

- We can only assume that this requirement was set so as to try and identify an institution that would perform monitoring activities over the practice of mediators.
- Practice management/monitoring is a very different and specialized activity, that is distinct from the provision of training (Just as law schools do not provide supervision over the conduct of lawyers)
- It is therefore problematic to now require training providers to perform a monitoring activity over mediators.
- There are a number of organizations in South Africa that do have capacity and processes in place to monitor conduct of mediators.

We would recommend that the Department considers a more appropriate mechanism for ensuring effective practice management of mediators.

2.5 Requirement to “peruse all documents (sect 8.12)

We would suggest that mediators do not need to peruse " all documents pertaining to the matter".

It is sufficient that the mediator be required to understand the issues beforehand. "Perusing all documentation" is the function of a court not a mediator. The essence of mediation is to mediate a dispute not to pass judgment. Therefore If for example the mediator is confronted by documentation he/she might take a view and tender legal advice which is not the mediator's function.

2.6 Additional comments

Rule 1 (vi) is duplicated in Rule 1 (xi).

Rule 1 (b)(i) "role play" should read "role plays"

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