

## Schedule 1 (A)

(See also By-Laws 6 and 6C)

### The requirements for admission as an Associate member

1. All Associate members will have a basic understanding of:
  - a. The New Zealand Legal System;
  - b. The law of torts;
  - c. The law of contract and agency;
  - d. The law relating to the sale of goods and services;
  - e. The law of persons, including bodies corporate;
  - f. The law of property;
  - g. Consumer legislation;
  - h. Dispute resolution including factors relevant to choosing a dispute resolution process, and managing a dispute;
  - i. The basic elements of negotiation including as to different paradigms of negotiation (for example, positional, co-operative and interest-based bargaining);
  - j. The essential elements of mediation including as to pre-mediation procedures; the agreement to mediate; the role of the mediator; conduct of a mediation; and settlement agreements;
  - k. The essential elements of arbitration (including as to the agreement to arbitrate; appointing arbitrators; the role of the arbitrator; the Arbitration Act 1996; the parties' obligations; the purpose and conduct of a preliminary meeting; the hearing; awards; and post hearing avenues to either challenge or enforce an award).
2. In addition, Associate members will each have a more detailed understanding of **either**:
  - a. Determinative dispute resolution processes such as arbitration, adjudication and expert determination ('determinative dispute resolution processes'); **or**
  - b. Consent-based dispute resolution processes such as conciliation, facilitation, and mediation ('consent-based-dispute resolution processes').
3. In the case of determinative dispute resolution processes, an Associate member will be familiar with:

- a. Evidence including the standard and burden of proof; the relevance of relevance; weight and admissibility; the Evidence Act 2006; the particular role of and responsibilities attaching to expert evidence, and the presentation of evidence in a hearing; and
  - b. Advocacy including as to the role of a party's representative; styles and techniques of advocacy; the skills required to prepare and present a case effectively (for example in the articulation of claim and response; interlocutory process; preparation of evidence and witness statements; opening, examination; cross examination; re-examination; closing a case); the professional obligations of an advocate.
4. In the case of consent-based dispute resolution processes, an Associate member will be familiar with the significance of (and, where applicable, relevant legal principles applying to):
- a. Mediator impartiality and neutrality;
  - b. Confidentiality, the idea of 'without prejudice', and privilege;
  - c. A mediator's potential liabilities in contract, tort, for breach of fiduciary and/or statutory obligations; and to third parties;
  - d. The extent of mediator immunity;
  - e. Mediation clauses, court ordered mediation processes, agreements to mediate;
  - f. Agreements made as a result of mediation.

### **Education Syllabus for Fellowship**

#### **A Communication Skills**

- 1 Listening and speaking skills
- 2 Communication skills for hearings and meetings
- 3 Writing – awards and agreements

#### **B Law and Practice of Arbitration**

- 4 Arbitration agreements
- 5 Recognition and enforcement of the agreement
- 6 Preliminary meeting
- 7 Meeting procedures and arbitrators powers
- 8 Hearings

- 9 Court involvement in arbitrations
- 10 Remedies
- 11 Assessment of evidence
- 12 Decision making
- 13 Awards – form
- 14 Award writing
- 15 Post award
- 16 Ethics for arbitrators

## **C Mediation**

- 17 Negotiation skills for mediators
  - (a) Problem solving
  - (b) Negotiation styles
  - (c) Situations, eg: acting on instructions; multi party negotiations; proximity issues
  - (d) Techniques
  - (e) Ethical issues
  - (f) Settlement procedures
- 18 Mediation
  - (a) Exchange of information
  - (b) Agenda
  - (c) Opening statements
  - (d) Caucuses
  - (e) Joint meetings
  - (f) Impasse
  - (g) Techniques
  - (h) The agreement
  - (i) Post mediation procedure
- 19 Ethics for mediators
- 20 Subject specific mediation -  
Topics selected from:
  - (a) Employment disputes
  - (b) Family disputes
  - (c) Health provider / patient disputes
  - (d) And other such areas as may be indicated from time to time

## **D Practical Dispute Resolution**

## Schedule 1 (B)

(See also By-Laws 6 and 6C)

**The means by which candidates are able to establish that they meet the requirements for admission as an Associate member, are:**

1. In the case of any candidate who holds a law degree, the production of evidence that the candidate:
  - a. has attended a training course in determinative dispute resolution processes of a kind that is similar to the Institute's Arbitration Skills Intensive course; **or**
  - b. has attended a training course in consent-based dispute resolution processes of a kind that is similar to the Institute's Mediation Skills Intensive course; **or**
  - c. is able to demonstrate a sufficient level of practical experience in dispute resolution such as to satisfy the Council that the requirement for attendance at courses of the kind contemplated at sub-paragraphs i and ii above should not be required in the particular case.
  
2. In all other cases, the production of evidence that the candidate:
  - a. Has passed sufficient and relevant courses of study in relation to dispute resolution at any University or other tertiary educational establishment that is recognised by Council as providing training that will meet the requirements for admission as an Associate member<sup>1</sup>; **and**
  - b. has attended a training course in determinative dispute resolution processes of a kind that is similar to the Institute's Arbitration Skills Intensive course; **or**

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<sup>1</sup> For the avoidance of doubt, it is noted that Council will accept passes in the following courses of study Massey University as meeting these requirements, namely (a) Introduction to Dispute Resolution, Law and Mediation, Dispute Resolution Practicum, and **either** Dispute Resolution Advocacy **or** Evidence and Advocacy; or (b) Fundamentals of the Law; Elements of Dispute Resolution and Dispute Resolution Practicum.

- c. has attended a training course in consent-based dispute resolution processes of a kind that is similar to the Institute's Mediation Skills Intensive course; or
  - d. is able to demonstrate a sufficient level of practical experience in dispute resolution such as to satisfy the Council that the requirement for attendance at courses of the kind contemplated at sub-paragraphs i and ii above should not be required in the particular case.
3. The Council retains a discretion to assess every application for admission to Associate membership on its merits, and in light of the applicant's particular experience and circumstances.