



## **BY-LAWS**

### **Arbitrators and Mediators Institute of New Zealand INC**

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## **1. Executive Committee**

**1.1** The Council may, if considered necessary for the conduct of the affairs of the Institute, appoint from its own members, or from members of the Institute generally, an Executive Committee.

**1.2** The Executive Committee shall have authority, subject to the direction of and in accordance with the policies from time to time laid down by the Council, to exercise such of the functions, duties and powers of the Council as may be necessary or convenient for the purpose of carrying on the day to day business of the Institute.

## **2. Membership**

Members of the Institute shall be designated as follows:

- a) Student members
- b) Affiliate members
- c) Associate members
- d) Associate members (Family Dispute Resolution)
- e) Fellow members
- f) Retired Members
- g) Serving Judicial Officer Members
- h) Honorary Members
- i) Foundation Members
- j) Honorary Life Members

## **3. Register of Members**

**3.1** The Council shall keep and maintain a Register of Members in which shall be recorded:

- i. The full surname and given names of each member;
- ii. The occupation of each member;
- iii. The designation of the member;
- iv. The date of the admission to membership;
- v. The address of each member; and
- vi. Such other particulars as the Council may from time to time prescribe.

**3.2** Names shall be entered in or removed from the Register of Members only on the authority of a resolution of the Council properly recorded in the Minute Book of the Council.

**3.3** Every member shall furnish to the Institute at such times as the Council shall require all such information as is necessary to maintain the Register of Members in accordance



with this By-Law. Such information shall include, where appropriate, the email address of the member.

#### **4. Addresses of Members**

**4.1** Every member shall keep the Institute notified of their current address. For the purposes of this clause if the member provides an email address this shall be deemed the address of that member.

The address provided shall be deemed to be the registered address of that member for the purposes of receiving notices of all meetings and all other documents which may be required to be served upon members.

**4.2** If any member fails to notify the Institute of their address or any change to that address, the Institute shall not be responsible

**4.2.1** For failing to give prior notice of meetings of the Institute; or

**4.2.2** For failing to serve on the member such other documents as may be required to be served on members.

No meetings or other proceedings of the Institute shall be invalidated or prejudiced by reason of the non-receipt by the member of any notice or document.

#### **5. Qualifications for Membership**

All applicants for membership shall satisfy the requirements of the classifications of membership as set forth in By-Law 6 of these By-Laws and such other requirements as the Council may from time to time specify under these By-Laws.

#### **6. Classification of Membership**

Any person who satisfies the Council that they are a fit and proper person to be admitted to, or to remain, or be reinstated, as a member of the Institute may be admitted to membership having regard to the following membership classifications.

##### **6A. Student Members**

A student member is a person who is engaged in full time tertiary study.

A student member shall:

- i. Have access to the member's only part of the Institute's website;
- ii. Be eligible for member rates to AMINZ events;
- iii. Receive electronic information;
- iv. Receive such other benefits as the Council may determine from time to time

The names of student members shall not be listed on the AMINZ website.

Student members shall not be entitled:

- a. To vote at meetings of or on any referendum conducted by the Institute
- b. To take part in the management of the Institute, including being on any Committee of the Institute; or



- c. Be elected as an officer of or be a member of Council of the Institute; or
- d. To use any designatory letters after their names.

#### **6B. Affiliate Members**

An affiliate member is a person who wishes to be associated with the Institute and receive the information and correspondence disseminated to members. This classification is for a person interested in the practice of dispute resolution processes but who is not qualified for entry to any other membership classification.

An affiliate member shall, at the sole discretion of Council, be entitled to the ordinary privileges of membership but they shall not be entitled:

- i. To vote at meetings of or on any referendum conducted by the Institute; or
- ii. To take part in the management of the Institute including being on any Committee of the Institute; or
- iii. To be elected as an officer of or be a member of Council of the Institute; or
- iv. To use any designatory letters after their names.

#### **6C Associate Members**

An Associate member is a person who satisfies the Council that they have sufficient knowledge of dispute resolution processes through experience and/or training to fulfil the requirements for admission as an Associate member.

The requirements for admission as an Associate member are set out in Schedule 1 (A) of these By-Laws.

The means by which candidates may demonstrate that they have met the requirements for admission as an Associate member include those set out in Schedule 1 (B) of these By-Laws.

#### **6D Associate Members (Family Dispute Resolution)**

An Associate member (Family Dispute Resolution) is a person who satisfies the Council that they have sufficient knowledge of family dispute resolution processes through experience and/or training to fulfil the requirements for admission as an Associate member (Family Dispute Resolution).

The means by which candidates may demonstrate that they meet the requirements for admission as an Associate member (Family Dispute Resolution) are as set out in Schedule 1 (C) of these By-Laws.

A person who is an Associate member (Family Dispute Resolution) and who is also a member of the Institute in a different membership category will retain all membership entitlements pertaining to that other membership category. Those who are Associate members of the Institute only by virtue of admission to the status of Associate member (Family Dispute Resolution) shall have all of the rights and privileges pertaining to Associate membership of the Institute, but they will not be entitled to hold themselves out as having any category of membership other than 'Associate member (Family Dispute Resolution)."

#### **6E Fellow Members**

A Fellow of the Institute is a person who satisfies the Council that by virtue of their training and experience and their personal qualities, has competence to act as an arbitrator or as a mediator as the case may be.

#### **Classification as a Fellow**

The areas in which the classification of Fellow may be attained are as follows:

**i. Arbitration**

In the case of candidates for admission as a Fellow member (Arbitration) the areas in which the standard to be attained are set out in the Education Syllabus attached as Schedule 1 of these By-Laws.

**ii. Mediation**

In the case of candidates for admission as a Fellow member (Mediation) the areas in which the standard to be attained are set out in the Education Syllabus attached as Schedule 1 of these By-Laws.

**Fellowship Standards**

Unless waived by the Council in accordance with Schedule 3 of these By-Laws the only means by which a candidate can demonstrate that they have attained the necessary standard to be classified as a Fellow is by passing the AMINZ Fellowship testing programme.

**AMINZ Fellowship Testing Programme**

The Fellowship testing programme is designed to test the candidate's theoretical knowledge and practical application of this knowledge. It also requires assessment of the candidate's personal qualities for acting as a arbitrator or mediator as the case may be.

The Examination Regulations, attached as Schedule 2 of these By-Laws, shall apply to all aspects of the Fellowship testing programme.

Candidates for Fellowship may prepare for the Fellowship testing programme by taking relevant university courses but this is not obligatory.

AMINZ is the sole examiner of the Fellowship testing programme.

**Waivers**

The Council may waive in whole or in part compliance with the requirements prescribed by this By-law for admission as a Fellow of the Institute. The Guidelines for Admission as a Fellow by way of waiver are set out in Schedule 3 of these By-laws

**6E Retired Members**

- i. Any member who has retired from professional work or employment and who has ceased to accept dispute resolution appointments, on supplying to the Council proof of retirement and, subject to approval by the Council and so long as that retirement continues, shall be entitled to retain membership of the Institute and designation as a retired member on payment of an annual subscription prescribed from time to time by the Council.
- ii. Retired members shall be entitled to the ordinary privileges of membership but they shall not be entitled to vote at meetings of or on any referendum conducted by the Institute or to be elected as officers or members of the Council.
- iii. Any member who has retired under the foregoing provision and who at the date of retirement has been a member of the Institute continuously for not less than twenty-five years, or any such member who in the opinion of the Council has rendered exceptional service to the Institute, may be exempted from the payment of any annual subscription.
- iv. Retired members may apply for reinstatement to their former status upon resuming the acceptance of dispute resolution appointments and upon payment of the appropriate subscription.



## **6F Serving Judicial Officer Members**

Any member of the Institute who is appointed to judicial office who cannot by reason of that appointment practice as a dispute resolution professional (other than as part of the judicial functions of that office) may remain a member of the Institute of the same class of membership as at the time of judicial appointment, but at a reduced subscription fixed in accordance with the Rules.

On cessation of that judicial appointment, that member shall be entitled to revert to the class of membership held at the time of appointment without further assessment or qualification and on payment of the appropriate subscription.

## **6G Honorary Members**

Honorary Members may be elected by the Council as it thinks fit. Every candidate shall be a person who:

- a. By reason of their position and experience relating to dispute resolution processes has rendered or is able to render important assistance in promoting the objects of the Institute; or
- b. Has by invitation of the Council prepared and presented a paper, or is responsible for a publication, of exceptional benefit to the practice of dispute resolution which is of such a standard that in the opinion of the Council it merits appointment as an Honorary Fellow or an Honorary Associate Member as the Council thinks fit.

## **6H Foundation Members**

All members who were members at 18 December 1987 shall be designated as Foundation Members of the Institute in addition to maintaining their ordinary membership status.

## **6I Honorary Life Members**

Any Fellow or Associate who has rendered pre-eminent service to the Institute and who is so recommended by unanimous vote of the Council may, without payment of any subscription or dues, be admitted by the Institute in general meeting as an Honorary Life Member.

Upon being admitted as a Honorary Life Member that member shall become entitled to all the privileges of a financial member during their life provided that for sufficient cause the Institute in general meeting may cancel any such Honorary Life membership.

## **7. Application for admission, reinstatement or Transfer**

**7.1** Every application for:

- a. **Admission** as a member of the Institute; or
- b. Reinstatement as a member of the Institute at the same or lower level of membership as at the date of resignation where the applicant was previously a member of the Institute but has resigned; or
- c. Transfer from one class of membership to another shall be made to the Council.

Shall be in such form and manner and comply with such conditions as may from time to time be prescribed by Council.



The applicant shall sign a declaration and undertake on admission to be bound by the Rules and By-Laws of the Institute and all subsequent amendments of them.

- 7.2** Transfer from one class of membership to another shall not be automatic but must be the subject of an application in writing to the Council and shall be subject to compliance with such requirements as the Council may from time to time determine.
- 7.3** It shall not be obligatory upon the Council to furnish any reasons for refusal to admit or reinstate any person to membership or to approve transfer from one class of membership to another.

### **Application for Admission as fellow**

- 7.4** An application for admission as a Fellow and any application for waiver of any requirement must be completed and any relevant fees paid.
- 7.5** An interview will be conducted by two Fellowship Admissions Assessors to assess the suitability of the candidate to become a Fellow. The Assessors shall prepare a written report to Council on this matter
- 7.6** Subject to the decision by Council after considering the report received from the assessors and any application for waiver the suitable candidate may then register for the Fellowship testing programme.
- 7.7** Upon successfully completing the Fellowship testing programme the candidate may apply to the Council for admission as a Fellow of the Institute.

## **8. Continuing professional development regulations**

- 8.1** The Council shall have the power to adopt from time to time Continuing Professional Development Regulations setting out the manner in which Associate Members, Associate Members (Family Dispute Resolution), Fellow Members, and those who are members of Panels, shall be required to demonstrate their continuing level of competence appropriate to their class of membership or to their membership of a Panel.
- 8.2** The Continuing Professional Development Regulations are set out as Schedule 4 of these By-Laws. They shall have the force and effect of By-laws and shall be deemed to be part of these By-Laws.

## **9. Designation of Members**

- 9.1** Members shall be entitled to use after their names designations as follows:
- a Fellow Member shall be entitled to use the initials "FAMINZ" (i.e. Fellow of the Arbitrators' and Mediators' Institute of New Zealand);
  - an Associate Member shall be entitled to use the initials "AAMINZ" (i.e. Associate of the Arbitrators' and Mediators' Institute of New Zealand);
  - an Associate Member (Family Dispute Resolution) shall be entitled to use the initials "AAMINZ (FDR);
  - an Honorary Fellow Member shall be entitled to use the initials "FAMINZ (Hon)" (i.e. Honorary Fellow of the Arbitrators' and Mediators' Institute of New Zealand);
  - an Honorary Associate Member shall be entitled to use the initials "AAMINZ (Hon)" (i.e. Honorary Associate of the Arbitrators' and Mediators' Institute of New Zealand).



**9.2** Fellow Members shall be required to identify the area of their competence by the addition to the initials FAMINZ of the following word or words in parenthesis (i.e. (Arb), (Med), (Arb/Med))

The appropriate distinguishing word or words shall be fixed by Council at the time of admission as Fellow.

## **10. Panels**

- 10.1** The Institute shall maintain such lists or panels (hereafter "Panels") of members as Council deems appropriate to meet the needs of the Institute or the public interest.
- 10.2** Each Panel shall contain the names of members considered in terms of these By-Laws to be suitably qualified and experienced to serve on that Panel.
- 10.3** The basic criteria for admission to a Panel shall be those specified in the Guidelines for Panel Membership and Review specified in Schedule 6 to these By-Laws.
- 10.4** Every member desiring to be admitted to a Panel shall apply in writing to the Council on an approved application form. Council shall, on receipt of an application, consider the application having regard to the criteria for admission referred to in sub-clause 10.3 above.
- 10.5** Panel membership shall be reviewed every three years. This review will be conducted by the AMINZ Continuing Professional Development Committee having regard to the Guidelines for Panel Membership and Review specified in Schedule 6 of these By-Laws.
- 10.6** Any decision as to the inclusion on, exclusion from or removal from a panel of any name shall be made solely by Council.
- 10.7** It shall not be obligatory upon the Council to furnish any reasons for resolving to refuse to admit any person to a Panel or for resolving to remove any person from a Panel.
- 10.8** The name of any member may at the request of that member or on retirement be removed from a Panel by the Council.
- 10.9** The name of any member may be removed from a Panel by Council on the grounds of professional misconduct. In the event that an allegation of professional misconduct is made against a Panel member the provisions contained in Rule 12 of the Rules of the Institute shall apply.
- 10.10** Before removal of a member from a Panel for any reason the Council shall provide written notice to the member of its intention to remove the member and will allow the member an opportunity to be heard on why the member should not be removed from the Panel.
- 10.11** An annual administration fee of such amount as may from time to time be determined by the Council shall be paid by each Panel member at the same time as the annual subscription.

## **11. Examinations**

### **Appointment and role of the Director of Professional Studies**

**11.1** The Council will appoint a Director of Professional Studies (the 'DPS').

**11.1.1** The DPS will report to the Council of the Institute, and will be responsible to:





- 11.1.2** Have and maintain general oversight of all educational programmes and examination processes that are either approved or offered by the Institute in order to enable non-members of the Institute to qualify for membership and/or to enable current members to move between the Institute's membership categories;
- 11.1.3** Report to Council from time to time as required by Council and, where appropriate, to make recommendations for enhancement of educational programmes offered and examination/practical assessment processes implemented by the Institute;
- 11.1.4** Act as assessor for all examinations/practical assessment events offered by the Institute;
- 11.1.5** Liaise with the Deputy Directors of Professional Studies for Arbitration and for Mediation ('the Deputy Directors') to support them in carrying out their responsibilities including by:
  - 11.1.5.1** Approving examinations/practical assessment events set by them;
  - 11.1.5.2** Overseeing the examination/practical assessment processes that are offered to ensure that they are conducted fairly and in accordance with these By-laws;
  - 11.1.5.3** Ensuring that all examinations and practical assessment events are conducted and assessed fairly and appropriately.
- 11.1.6** The DPS will ex officio be a member of the Institute's Education Committee.

### **Appointment and role of the Deputy Directors of Professional Studies for Arbitration and for Mediation**

- 11.2** In addition to the appointment of the DPS, Council will appoint
  - 11.2.1** A Deputy Director of Professional Studies for Arbitration; and
  - 11.2.2** A Deputy Director of Professional Studies for Mediation
- 11.3** The Deputy Director of Professional Studies for Arbitration will have responsibility in respect of education, training and examination in the field of determinative dispute resolution processes.
- 11.4** The Deputy Director of Professional Studies for Mediation will have responsibility in respect of education, training and examination in the field of consensual dispute resolution processes (including Family Dispute Resolution).
- 11.5** In each case, the Deputy Directors will be responsible in conjunction with the DPS for:
  - 11.5.1** Developing and settling the examination questions and the practical assessment exercises for each examination in respect of those wishing to qualify for admission as Fellows of the Institute;
  - 11.5.2** Ensuring that the examination processes that are offered by the Institute for those wishing to qualify as Fellows of the Institute are appropriate having regard to the knowledge and/or skills being evaluated;
  - 11.5.3** Ensuring (in conjunction with the Executive Director and DPS) that appropriate training and support is offered to the Fellowship candidates.

### **Examinations for Fellowship**



- 11.6** On behalf of the Council, the DPS shall hold examinations and practical assessments for candidates seeking to be admitted to the Institute category of Fellow.
- 11.7** The DPS will be responsible for fixing the timing and venue(s) of all examinations and practical assessments. It is anticipated that Fellowship testing will be offered by the Institute on a regular basis.
- 11.8** The examinations and practical assessments shall be conducted in accordance with the syllabus and examination regulations set out in Schedules 1 and 2 of these By-laws.
- 11.9** The Executive Director of the Institute, following consultation with the DPS and the relevant Deputy Director, shall publish examination procedures for the information of candidates.
- 11.10** The Institute may fix such examination fees in respect of each examination or practical assessment event as it thinks fit.
- 11.11** The examinations for Fellowship shall be set by the Deputy Directors, who will refer the proposed examinations to the DPS for approval. For the avoidance of doubt, reference of proposed examination papers and/or practical assessments to the DPS by the Deputy Directors is for the purpose of checking suitability and clarity of expression, and to enable the DPS to assess whether the proposed examination papers/practical assessments strike a fair balance between subjective and objective questions, and generally that they address the skills and knowledge that the DPS is looking to test. The Deputy Directors will make recommendations to the DPS as to the content of examination papers and/or materials for use in practical assessments, but the DPS will have the final decision as to content and standards.

### **Marking/assessment of Fellowship examinations and practical assessment events**

- 11.12** The examinations and practical assessments shall be marked by or under the supervision of the Deputy Directors. A sample of the examination scripts and other assessed work shall be submitted to the DPS for his or her evaluation, and (subject to by-law 11.17 below) the DPS shall have the final decision on marks and grading.
- 11.13** In carrying out these responsibilities, the DPS and the Deputy Directors will act in accordance with the procedures and guidelines set out in these by-laws or as may be determined by the Council.
- 11.14** No candidate shall be able to pass any of the examinations or practical exercises offered by the Institute on an aegrotat basis, although the DPS may in his or her sole discretion make alternative arrangements for examination of any candidate who is unable by illness or bereavement to sit the examinations when scheduled (for the avoidance of doubt, this discretion is limited to the examination component of the requirements for Fellowship and does not apply to the practical assessment component of the requirements for Fellowship).

### **Passes in Parts 1 and 2 required before practical assessment**

- 11.15** All Fellowship candidates must achieve pass marks in each of the Part 1 and Part 2 examinations before being eligible to undergo the practical assessment element of the Fellowship testing process.

### **Reconsideration of marking**

- 11.16** A candidate for Fellowship who has failed to achieve the mark(s) required to pass any examination or practical assessment event may apply to Council in writing for a



re-consideration of the mark(s) given.

Any such application must be made within 30 days of the date that the notice of the candidate's mark(s) is given. In that event:

- 11.16.1** Council may arrange for the grade(s) to be reviewed by a senior Fellow of the Institute ('the reviewer');
- 11.16.2** If the reviewer agrees that the grade(s) as approved by the DPS is or are within or above a reasonable range for the work submitted, then the application for re-consideration shall be declined and no further correspondence will be entered into in respect of the grade as approved by the DPS;
- 11.16.3** If the reviewer considers that the grade(s) as approved by the DPS have fallen below a reasonable range for the work submitted, and that the work being re-considered meets or exceeds the requirements of the relevant regulations, then after consultation with the DPS Council may, in its sole discretion, substitute the grade given by the reviewer for that approved by the DPS.
- 11.16.4** For the avoidance of doubt, aside from the process contemplated by this by-law 11.17 the DPS' decisions in respect all other aspects of any particular fellowship examination or assessment process will be final, and any correspondence received by Council from candidates will be referred to the DPS for response.

#### Re-sits

- 11.17** Any candidate who fails a component of the Fellowship testing programme may (subject to payment of the appropriate fees) re-sit that component of the Fellowship testing programme within three years of the initial examination/assessment.
- 11.18** Candidates will be allowed to re-sit separate components of the testing programme only once. If not successful on re-sitting, the candidate will thereafter have to undertake the whole of the Fellowship testing programme again (including but not limited to attending the relevant Advanced Seminar and Pre-Fellowship Examination Seminar).
- 11.19** Where any candidate seeks to re-sit a component of the Fellowship testing programme more than two years after his or her initial examination/assessment, then attendance at both the relevant Advanced Seminar and the Pre-Fellowship Examination Seminar will be required before the re-sit can be attempted.
- 11.20** Any candidate who does not achieve pass grades in all elements of the Fellowship testing programme within three years of his or her initial examination/assessment will have to start again and successfully complete all components of the Fellowship testing programme, irrespective of whether or not any components of the Fellowship testing programme were achieved previously.

#### Other examinations

- 11.21** With respect to any examinations and/or assessments undertaken by the Institute for admission as an associate member or associate member in Family Dispute Resolution, as the case may be, the Council may accept passes in the examinations/assessment events of other professional dispute resolution bodies if it is satisfied that the standard of those examinations is consistent with the standards required by the Institute.



## **12. Diplomas and certificates**

- 12.1** The Council shall have the power at its sole discretion and convenience to grant Certificates of Membership and diplomas or certificates in connection with examinations in such manner and under such conditions and on payment of such fees or other sums (if any) as the Council may from time to time prescribe.

### **12.2 Certificates of Membership**

- a. Every Fellow, Associate, Associate (Family Dispute Resolution) and other member as Council may from time to time determine, shall be issued with a Certificate of Membership.

Such Certificate shall be in such a form as Council shall determine.

The Certificate shall remain the property of the Institute and shall be recoverable on request.

- b. Any person ceasing to be a member shall, on request, return their Certificate of Membership to the Council, providing that any member retiring from practice may, with the consent of the Council, retain such Certificate of Membership.

### **12.3 Examination Certificates**

Every candidate sitting an examination conducted by, or for, the Institute, shall be issued with a Certificate of Notification, notifying the examination result and the marks or grades attained by the candidate.

### **12.4 Diploma of Merit**

A member who has written a noteworthy thesis on a subject connected with arbitration or mediation, which shall be approved by the Council or, who in the opinion of the Council, has made a contribution of something of special value to the Institute or to arbitration or mediation, may be provided with a Diploma of Merit. Such diploma may be issued to that member in such manner as the Council shall in each case prescribe.

## **13. Application fees and subscriptions**

- 13.1** Application Fees for prospective members and Subscriptions payable by members shall be such as may, from time to time, be determined by the Council.
- 13.2** Every candidate for membership shall before being entered into the Register of Members and on receipt of confirmation of admission to membership, pay the first annual subscription. Provided that any person elected a member during the Institute's financial year shall pay such proportion of the annual subscription as the Council shall determine.
- 13.3** Every member who is a candidate for transfer from one class of membership to another shall, when requested by the Council, pay the difference in subscription or such proportion of that subscription as the Council shall determine for the current financial year between the class to which the member belongs and the class to which the member applies to be transferred.
- 13.4** If any member shall be unable, by reason of ill-health or advanced age, or from any other sufficient cause, to continue to practise as an arbitrator or mediator and ceases to be a member of the Institute, then the Council may at its discretion remit the member's annual subscription and any arrears due from the member.

The Council may at its discretion reinstate the membership of any such person who shall have ceased to be a member for any of the foregoing reasons.



- 13.5** The annual subscription shall be payable in advance by each member on the first day of the Institute's financial year.

The payment of a part or whole of the member's subscription may, upon the application of such member, be suspended or refunded by the Council for the period of the member's absence from New Zealand or under any other special circumstances.

- 13.6** Every candidate for an examination of the Institute shall lodge the fees prescribed for the examination with their application to sit the examination.
- 13.7** The Council may, for due cause, waive the payment of any entrance fee or subscription by any member.

#### **14. Cessation of membership**

- 14.1** If any member's subscription shall be overdue for 6 months, notice of such fact shall be sent to that member. If that member omits or neglects to pay the subscription within 1 month after the date of such notice, that member's name may be removed from the Register of Members by the Council. From the date of such removal such member shall cease to be a member of the Institute.
- 14.2** Resignation shall release the member only from payment of the subscription for the remaining portion of the financial year after the month on which the member notifies their resignation in writing. Council shall have power to remit such portion of that subscription as it may think fit.
- 14.3** No person whose membership of the Institute has been terminated for non-payment of subscriptions or who has tendered their resignation from the Institute without having paid the subscription for the financial year then current shall be re-admitted to membership of the Institute until all subscriptions outstanding at the time of such termination of membership or resignation have been paid in full.
- 14.4** Subject to By-Law 7 a member whose name has been removed from the Register of Members for non-payment of subscriptions may apply at any time for reinstatement. Such member may be reinstated upon payment of a reinstatement fee as determined by the Council and/or on such other terms and conditions as the Council may think fit. The Council shall not be compelled to reinstate such member and may refuse to assign any reason for its refusal to do so.
- 14.5** Whenever any person shall cease to be a member of the Institute that person's name shall be removed from the Register of Members and any Panel.

Further, that person shall from such date cease to have any claim upon or interest in the property of the Institute or any part of that property.

#### **15. Conduct of elections of members of Council**

- 15.1** A ballot as provided for in Rule 8.5 of the Rules of the Institute for the election of the President, the Vice President, and Ordinary Council Members shall be conducted in accordance with the Rules of the Institute and the following procedures.
- 15.2** No later than the date upon which any notice of an election is sent to members, the Council shall appoint a Returning Officer to conduct the election in accordance with the Rules and these By-Laws.



- 15.3** The following information shall be sent to each member entitled to participate in the election at the email address that they have advised the Institute to be their email address:
- Notice of the election, specifying the number of positions for which elections of candidates are required;
  - The name(s) of the person(s) nominated for those positions;
  - Biographical details of each candidate stating their full name, AMINZ membership status, region, up to 300 words to make their case for election, and a photo (no website or hyperlinks will be allowed);
  - Details of the procedure for electronic voting in respect of the election, including the closing time for voting; and
  - Such other information as the Council may determine, if any.
- 15.4** Each member who is eligible to vote may then vote electronically according to the procedure prescribed by the Council, provided that the closing time for voting shall not in any case be less than 10 working days after the voting information is sent to members.

**15.5** Voting information shall be in the following form or to like effect:

**ARBITRATORS' AND MEDIATORS' INSTITUTE OF N.Z. INC. VOTING INFORMATION**

(For Election of Officers and Council)

I record my vote for the following candidates:

(Voters should select only the names of candidates for whom they wish to vote, and may not select more candidates in any category than there are vacancies in that category to be elected)

<b>FOR PRESIDENT:</b> (One to be elected)	Name 1 Name 2
<b>FOR VICE PRESIDENT:</b> (One to be elected)	Name 1 Name 2
<b>FOR COUNCIL MEMBERS:</b> (Four to be elected)	Name 1 Name 2 Name 3 Name 4

- 15.7** Once voting has closed, the Returning Officer must sign a certificate addressed to the President declaring the results of the election for the various offices open for election. With the exception of information which identifies which candidates have been elected, and which candidates have not been elected, the certificate and its contents shall be confidential to the Returning Officer and the President.
- 15.8** If, by reason of an equality of votes given for two or more candidates the election is not complete, the Returning Officer shall decide by lot in such manner as she or he may determine which of the candidates shall be elected, and thereby complete the election. The process by which the Returning Officer carries out a decision by Lot under this By-Law will be observed by the President to ensure that it is carried out fairly.
- 15.9** For the avoidance of doubt:
- Each member who is eligible to vote in any election is entitled to one vote only;



- b. If the Returning Officer is satisfied that a member has voted more than once, or the member has not voted in accordance with the prescribed procedures, the member's vote(s) will be invalid;
- c. Any failure to forward voting information to any member entitled to vote shall not invalidate the election

**15.10** The Council may engage a company or organisation (an 'election agent') to conduct any election. In that event, the election agent and/or one of its officers will, in relation to the election, carry out the functions of the Returning Officer in respect of that election.

## **16. Rules of practice and Codes of Ethics**

**16.1** In addition to the admission requirements provided in terms of By-Law 7 of these By-Laws and the Continuing Professional Development Regulations provided in terms of By-Law 8 of these By-Laws, the Council may from time to time in its discretion make such other Regulations, Rules or Codes of Practice, Codes of Ethics or other Codes or Procedures governing the conduct of members and the practice of the profession of dispute resolution.

Such other Regulations, Rules or Codes of Practice, Codes of Ethics or other Codes or Procedures shall be included as schedules to these By-Laws and shall have the force and effect of By-Laws and shall be deemed to be part of these By-Laws.

**16.2** The AMINZ Code of Ethics is attached to these By-Laws as Schedule 5.

## **17. Interpretations**

**17.1** These By-Laws shall be read and interpreted as subsidiary to the Rules of the Institute and in the event of any conflict between the provisions of the Rules of the Institute and the provisions of these By-Laws the Rules shall prevail.

**17.2** All words used in these By-Laws shall have the same meaning as those ascribed to them in the Rules of the Institute.



### Schedule 1 (A)

(See also By-Laws 6 and 6C)

The requirements for admission as an Associate member

1. All Associate members will have an understanding of:
  - a. The New Zealand Legal System, including the principles of The Treaty of Waitangi;
  - 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, including arbitration, mediation and adjudication, 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);
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**
  - c. has attended a training course in consent-based dispute resolution processes
3. of a kind that is similar to the Institute's Mediation Skills Intensive course; **or**
4. 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.
5. 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.

<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



## Schedule 1 (C)

(See also by-law 6D)

Every candidate for admission as an Associate member (Family Dispute Resolution) must demonstrate knowledge all of the following:

- Family systems theories and child development
- Gender awareness
- Domestic violence and power imbalances, and how to deal with unequal bargaining positions
- How to deal with highly emotional clients
- The challenges of dealing with unrepresented clients.
- Disability awareness
- Tikanga Maori
- Other cultures and cultural practices
- Community-based organisations and support groups offering families help (which includes an understanding of the social welfare benefit system)
- Law applying to Family Court disputes including an understanding of family law including the Care of Children Act 2004, the Child Support Act 1991, the Property Relationship Act 1976 and the Family Disputes (Resolution Methods) Act)
- Case management and Family Court processes
- An understanding of child-focused practice and how to include the voice of the child in mediation.

And either;

- i. Be an existing Associate or Fellow on the AMINZ Mediation Panel  
Or
- ii. In all other cases the applicant will be required to have a basic understanding of the New Zealand legal system and fulfil the syllabus requirements as follows:

### A. An Introduction to dispute resolution

1. In all other cases the applicant will be required to have a basic understanding of the New Zealand legal system and fulfil the syllabus requirements as follows:
  - a. Choosing a dispute resolution process
  - b. Managing a dispute
2. Negation
  - c. Elements of negotiation
  - d. Introduction of styles and techniques, eg: positional, co-operative and interest based

Every candidate for admission as an Associate member (Family Dispute Resolution) must demonstrate knowledge all of the following:

- Family systems theories and child development



- Gender awareness
- Domestic violence and power imbalances, and how to deal with unequal bargaining positions
- How to deal with highly emotional clients
- The challenges of dealing with unrepresented clients.
- Disability awareness
- *Tikanga Maori*
- Other cultures and cultural practices
- Community-based organisations and support groups offering families help (which includes an understanding of the social welfare benefit system)
- Law applying to Family Court disputes including an understanding of family law including the Care of Children Act 2004, the Child Support Act 1991, the Property Relationship Act 1976 and the Family Disputes (Resolution Methods) Act)
- Case management and Family Court processes
- An understanding of child-focused practice and how to include the voice of the child in mediation.

And either:

- i. Be an existing Associate or Fellow on the AMINZ Mediation Panel

Or

- ii. In all other cases the applicant will be required to have a basic understanding of the New Zealand legal system and fulfil the syllabus requirements as follows.

#### **A. An Introduction into Dispute Resolution.**

1. Dispute management and options
  - a. Choosing a dispute resolution process
  - b. Managing a dispute
2. Negation
  - c. Elements of negotiation
  - d. Introduction of styles and techniques, eg: positional, co-operative and interest based
3. Mediation
  - e. Pre mediation procedure
  - f. Agreement to mediate
  - g. The role of the mediator
  - h. The mediation
  - i. The agreement

#### **B. Law for Mediators**

4. For the Mediators-
  - a. Neutrality
  - b. Confidentiality



- c. Impartiality
- d. Liability in contract
- e. Liability in Tort
- f. Fiduciary obligations
- g. Statutory liability, eg: consumer protection
- h. Liability to third parties
- i. Mediator immunity

**For the parties-**

- j. Mediation clauses
- k. Court ordered mediations
- l. Agreements to mediate
- m. Privilege "Without Prejudice" legal professional, marital
- n. Liability for advice given to parties
- o. Agreements made as a result of mediation
- p. Responsibility for agreements made



## **Schedule 2** (See also By-Law 11)

Examination Regulations - Fellowship

### INTRODUCTION

These Regulations shall apply to the Institute's Fellowship Examinations

#### **Pre-fellowship seminar**

1. The Institute will hold an Advanced Arbitration Seminar and a Pre- Fellowship Examination seminar prior to Arbitration Fellowship examinations being conducted.
2. The Institute will hold an Advanced Mediation Seminar and a Pre-Fellowship Examination seminar prior to Mediation Fellowship examinations being conducted.
3. Attendance at both arbitration-related seminars by candidates wishing to undertake the Arbitration Fellowship testing is mandatory, and attendance at both mediation-related seminars by candidates wishing to undertake the Mediation Fellowship testing is mandatory. The requirement to attend the Advanced Arbitration Seminar (in the case of a candidate for Fellowship in arbitration) and the Advanced Mediation Seminar (in the case of a candidate for Fellowship in mediation) will not apply to any candidate who has attended either an Arbitration Skills Intensive or a Mediation Skills Intensive (as appropriate) as offered by the Institute within no more than two years of the examinations to be undertaken.

#### **Examination procedures**

1. The examinations will be held at the places and times indicated on the letter sent to all candidates when receipt of enrolment is acknowledged by the Institute.
2. The examination candidates should arrive fifteen minutes before commencement of the examination.
3. Any candidate arriving thirty minutes (half an hour) after the commencement of the exam will not be admitted.
4. No candidate will be permitted to leave the room once the exam commences until 45 minutes have elapsed. Nor can a candidate leave the room in the last 15 minutes of the exam.
5. An additional ten minutes for the Part 1: The Law of Arbitration and the Part 1: The Law of Mediation examination papers and fifteen minutes for the Part 2: Arbitral Awards and the Part 2: Settlement Agreements examination papers are to be allowed for the reading of the examination paper by the candidates, immediately before the examination commences.
6. Examination candidates will be provided with scripts (blank paper on which the answers are to be written) before the examination.
7. Examination candidates are to use their examination number only on the scripts and not their name. If a name appears on the scripts, either as part of the text of the candidate's answers or otherwise, this may result in disqualification.
8. All answers to examination questions must be hand-written in ink or ball point (or similar) pen. Writing instruments for this purpose must be brought to the examination room by candidates.



9. Computers and telephones, including cellular phones, are NOT permitted in the room during the examination.
10. The examinations held under these Regulations are Open Book.
11. Part 1: The Law of Arbitration, Part 1: The Law of Mediation, Part 2: Arbitral Awards and Part 2: Settlement Agreements examinations are to be sat with the candidates supervised in an examination room. The only exception to this By-Law requiring supervision of examinations is when candidates are required to produce a written Award or Settlement Agreement.
12. Arbitration Awards and Settlement Agreements, may, subject to any conditions set by the Director of Professional Studies, be sat unsupervised and outside of the examination room. Candidates are to strictly observe the examination requirements disallowing any discussion about the paper they are sitting with any other person while they are responding to the question(s) and have yet to file the Award or Settlement Agreement with the office at AMINZ. The Director of Professional Studies must set a date and time within which Arbitration Awards and Settlement Agreements must be filed with AMINZ to conclude the examination process.
13. Arbitration Awards and Settlement Agreements, shall be received electronically or can be hand delivered in hard copy to the AMINZ office. Arbitration Awards and Settlement Agreements must be delivered to the AMINZ office in the form set out above and by the date and time stipulated by the Director of Professional Studies for that particular examination.

### **Misconduct during the Examination**

1. Supervisors are required to make a written report to the Institute in all cases of alleged misconduct by any candidate. This written report must be sent to the Institute within 24 hours of the end of the examination.
2. Any papers or other material that the supervisor considers have been dishonestly introduced into the examination will be retained by the supervisor and will be forwarded to the Institute with the written report.
3. The candidate involved in any instance of alleged misconduct may make a written statement at the end of the examination which will be forwarded to the Institute by the supervisor.

### **Examination Pass Marks**

Part 1: The Law of Arbitration	65%
Part 2: Arbitral Awards	75%
Part 3: Arbitration Practical	80%
Part 1: The Law of Mediation	65%
Part 2: Settlement Agreements	75%
Part 3: Mediation Practical	80%

Note: For a candidate to pass a Part 1 paper the candidate must achieve a minimum of 50% pass for each question attempted by that candidate.

### **Notification of Examination Results**

1. Examination results will be forwarded by post to the address on the candidate's enrolment form.
2. Examination results will show the mark and indicate a pass or fail.





3. Examination results will not be given by telephone or fax machine. Candidates are asked not to make enquiries regarding examination results unless a period of ten weeks has elapsed from the date of the examinations.
4. Scripts and their marking are moderated by the Director of Professional Studies.



### Schedule 3 (See also By-Law 6D)

#### Waiver Guidelines

The following Guidelines shall be used by Council in determining whether the requirements for admission as a Fellow of the Institute may be waived.

- i. An application for a waiver shall be proposed and supported by a Council member who is preferably a Fellow and supported by a Fellow, both of whom shall have personal knowledge of the proposed member;
- ii. Any application for waiver must have an evidential basis having regard to the minimum attributes for a successful application as described below. For example at least two reasoned awards should be submitted in the case of an arbitrator candidate for waiver.
- iii. The application must also be accompanied by a report describing the proposed member's eminence in the field of dispute resolution processes and the prestige or benefit their membership will bring to the Institute.
- iv. The minimum attributes for a successful application shall be as follows:
  - a. Dispute resolution professionals who can demonstrate that they have practised continuously as such for at least 10 years and who have achieved eminence and renown
    - Through their high office on other dispute resolution organisations; or
    - Through their authorship of authoritative texts on the subject of dispute resolution; or
    - Through their standing as professor or equivalent in a university or equivalent academic institution where they teach or research dispute resolution practice and procedure.
  - b. Retired judges who had extensive experience in civil cases while serving and where the candidate can demonstrate (for example by submission of judgments or identification of reported cases) that they have given judgments on not fewer than 3 cases where an important matter at issue in the case(s) was an issue of dispute resolution principle, practice or procedure
- v. The Council member proposing the waiver candidate shall:
  - Not be present when the discussion and decision on the application is being considered by Council; and
  - Will be informed once the Council has reached its decision on the application; and
  - If the application for waiver is successful arrange for the proposed member to be interviewed by an interview panel, the members of whom and the manner of interview to be approved by Council



- vi. There will normally be no exemptions from the requirement that the proposed candidate for waiver must satisfy an approved interview panel of their knowledge of dispute resolution processes and their suitability to become a Fellow before the classification of Fellow can be conferred on the candidate.



**Schedule 4**  
(See also By-Law 8)

**Continuing Professional Development Requirements**

1. The following requirements for continuing professional development are mandatory for all Panel and List members who must maintain a record of qualifying events and submit it to the Executive Director by the end of February in each year.
2. (a) To retain their status, Panel and List members must meet the Institute's CPD requirements. Failure to qualify for a CPD certificate for two consecutive years may constitute grounds for the Council to consider removal of the member from the Panel or List.  
  
(b) Panel members shall, on a bi-annual basis, be required to attend a seminar or undertake such other learning in the panel area of speciality as part of the requirement to remain on the panel.
3. Fellows and associates are encouraged to maintain a record on a voluntary basis.
4. Certificates will be issued to members who complete 30 CPD points each calendar year.
5. No event shall be worth more than 10 CPD points, except in the discretion of the assessors. Points must be gained in two or more categories.
6. The Council may, from time to time, allocate or reallocate the values of events which gain CPD points.
7. The assessors shall be up to three Panel members appointed to assess the CPD returns.
8. The assessors may decide which categories will be used for any particular event claimed and may categorise new events subject to reconsideration by the Council.
9. Any Panel or List member who in any year fails to complete the required CPD points may make up the shortfall in the following year provided that the member also completes the requirement in that following year.
10. At each CPD assessment date, half of the points previously held (or 30 of the points previously held, whichever is the greater) may be carried forward to the next year.
11. CPD points shall be accredited as follows, subject to the assessors:

**Category 1**

For each event in which the member has made a direct contribution to the practice of dispute resolution, e.g., as

Arbitrator, mediator, facilitator, adjudicator or other neutral	10 points
If hearing exceeds 1 week	10 points per week or part week
Counsel, advocate, representative or expert witness	6 points (per week if appropriate)



Members claiming under this clause are invited to submit brief details on the relevant dispute resolution process. The assessors may, where they consider appropriate, approve a credit of fewer points.

### Category 2

For each event where the member has contributed to the teaching or learning of ADR at tertiary level.

AMINZ or equivalent conference paper	10 points (divided by number of authors)
Substantial written paper in an authentic journal	10 points (divided by number of authors)
Book on ADR	20 points per chapter (divided by number of authors on the chapter)
Formal tertiary lecture given	2 points
Thesis - please state claim	(guideline: 10 points per significant chapter)
Practicum teaching, practical exercises	2 points per half-day (28 points for a full practicum)
Minor article e.g., for leading AMINZ breakfast meeting	2 points
Giving professional supervision; formal mentoring	2 points
Significant private study	1 point per half day (5 points max)
Passing formal tertiary study unit e.g., Massey practicum or block course	10 points per unit (or as assessed)

### Category 3

For contributions of a collegial nature

Participation in AMINZ Annual Conference	2 points/half day of <i>formal</i> sessions
AMINZ seminars	2 point/half day
AMINZ breakfast meetings	1 point for participation, 2 points for presentation
Other relevant seminars	1 point/half day
Informal mentoring or debriefing with colleague (either giving or receiving)	1 point
Any other item.	please state claim.



**Schedule 5**  
(See also By-Law 16.2)

**Code of Ethics**

**Introduction**

All members are expected to abide by the Code of Ethics (the Code). If a member is alleged to be in breach of this Code they may be subject to the provisions of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ) rules dealing with professional misconduct and disciplinary matters.

This Code comprises 13 Ethical Statements. Each Ethical Statement is followed by a Commentary and Guidance sections. The AMINZ Code comprises the Ethical Statements, Commentaries and Guidance Sections. When interpreting and applying the Code, these 3 sections are to be given equal weight. Members are expected to know and understand the Code. If in doubt please follow the Guidance section under Ethical Statement 13.

**Ethical Statements**

**Ethical Statement 1**

Prior to accepting an appointment a member should have undertaken training and have appropriate experience in the relevant dispute resolution process.

**Ethical Statement 2**

A member should disclose any interest or relationship likely to affect impartiality or neutrality or which might create an appearance of partiality or bias.

**Ethical Statement 3**

A member should uphold the integrity and fairness of the relevant dispute resolution process.

**Ethical Statement 4**

A member should accept an appointment only if they have the ability to conduct the process in an efficient and timely manner.

**Ethical Statement 5**

The process should be conducted with diligence.

**Ethical Statement 6**

A member, subject to legal obligations or other recognised exceptions must observe the duty to protect the privacy of those participating in the process, and the confidentiality of all elements of the process.

**Ethical Statement 7**

Confidential information received by a member as a third party neutral, or in some other role, in a process may not be:

1. used to the members personal advantage, or
2. in the absence of party consent, be used in other separate process involving one of the original parties and a third party.

**Ethical Statement 8**

1. A member should not act with impropriety and should not give the appearance of impropriety.
2. A member should not harm AMINZ nor bring the reputation of AMINZ into ill repute.

**Ethical Statement 9**

A member should recognise that mediation is based on the principle of self determination by the parties.

**Ethical Statement 10**

A member should make decisions in a just, independent and considered manner.

**Ethical Statement 11**



A member should fully disclose and explain the basis of fees and charges before accepting appointment.

### **Ethical Statement 12**

Advertising or promotion by a member must be factually accurate.

### **Ethical Statement 13**

A member has an ethical duty to uphold AMINZ Code of Ethics.

## **Code of Ethics Commentary and Guidance**

### **Ethical Statement 1**

Prior to accepting an appointment a member should have undertaken training and have appropriate experience in the relevant dispute resolution process.

### **Commentary**

Competency must be the starting point when considering appointment acceptance. A member should not practice in the field of the proposed appointment without having a sound knowledge of the process so as to ensure that they can uphold the integrity and fairness of that particular process.

Members must ask themselves whether or not by dint of training and experience they have the necessary competency to undertake the tasks requested of them. The test to apply is to ask yourself:

“How would my competence to undertake this task be judged by my peers?”

### **Guidance**

If in doubt discuss the proposed appointment with a senior colleague being a Fellow of AMINZ. Consider middle ground options such as accepting the appointment but with the support of a mentor or supervisor. “Supervision” here means a professional relationship between you and a senior colleague with experience in the work that you are undertaking and with whom problems and reflection can be discussed in strict confidence. See Ethical Statement 6 on Confidentiality in relation to discussing matters with a senior colleague and or supervisor.

### **Ethical Statement 2**

A member should disclose any interest or relationship likely to affect impartiality or neutrality or which might create an appearance of partiality or bias.

### **Commentary**

This is a fundamental duty of disclosure owed to the parties prior to accepting any appointment. It is an ongoing duty to disclose, which continues throughout the process. The question to ask yourself is not whether you believe your impartiality or neutrality might be affected through some interest or relationship held by you; rather:

“Would an objective observer with knowledge of the relevant facts think that you might be impartial, might be biased in some way, or might have your neutrality affected in some way?”

The duty to disclose is a high obligation continuously owed to the parties.

### **Guidance**

If in doubt, disclose. The mere fact of having doubt is a sufficient trigger to affirm the duty.

The disclosure ought to be given in writing at the earliest opportunity, and when given should be comprehensive so that the parties are fully and fairly informed of the relevant facts which might lead to a recusal request.



Be vigilant for the emergence of new facts during the course of the process which might oblige you to disclose. Do not delay with the discharge of this duty once the need for possible disclosure becomes apparent. It is for the parties to decide how to respond to your information about disclosure. It is never for you to decide to withhold the disclosure. Circumstances which might give rise to an appearance of partiality include familiarity with some of the participants in the process. This may include the fact that a particular party has frequently appeared before you. If you are a barrister, and the solicitor for one of the parties has previously briefed you, that too ought to be disclosed if you are being put forward in a third party neutral role. This same principle of disclosure for a barrister applies to like relationships. If you are in any doubt as to the need to disclose and yet have not disclosed, you may be at risk of breaching this Ethical Statement. You are advised to urgently consult with a senior colleague of Fellowship status and to seek advice about your obligations under this Ethical Statement. Where reasonably practicable, when a member takes this step of consulting with a Fellow, both the member seeking advice and the Fellow giving it should record their understandings about that advice and exchange those understandings with each other prior to the member acting on that advice.

### **Ethical Statement 3**

A member should uphold the integrity and fairness of the relevant dispute resolution process.

#### **Commentary**

The Shorter Oxford English Dictionary Sixth Edition 2007 defines "integrity" to mean:

1. "the condition of having no part or element taken away or lacking; undivided state; completeness
2. the condition of not being marred or violated; unimpaired or uncorrupted condition; original state; soundness
3. a freedom from moral corruption; innocence, sinlessness b soundness of moral principle; the character of uncorrupted virtue; uprightness, honesty, sincerity".

Parties may agree to any one of a broad range of processes, some of which objectively may have aspects to them breaching the normal understanding of natural justice. So long as the parties are independently represented or are both advised of the possible shortcomings of a proposed process, and if necessary by you, then your obligation is to uphold the integrity of the agreed dispute resolution process.

This will require an understanding of any relevant legislation applying to the particular process so that statutory requirements are adhered to. Additionally for all adjudicative processes there will generally be an expectation that natural justice, which includes fairness, will be observed – unless elements of that concept have been modified by party agreement, prior to the otherwise perceived breach happening.

"Fairness" must be assessed in the context of the particular dispute resolution process.

#### **Guidance**

To be able to uphold the integrity of the process requires that the member be conversant with that relevant dispute resolution process.

Used in the context of this Ethical Statement, the member is required to uphold the soundness of the process so as to ensure that the process can be trusted by both the participants and by the public at large.

To fail to uphold the integrity of the relevant process is to let down AMINZ and its members. Only if the public have faith in the process will they use it and will the judiciary support it.

Sometimes parties seek a bespoke process such as "med-arb" where the one third party neutral first tries to mediate the dispute and if that fails then switches roles to arbitrate the disputes. This Ethical Statement requires of members that they understand the significance of modifying conventional processes, including the limitations on them to work freely in the particular role. See for example the judgment of Fisher J in *Acorn Farms Ltd v Schnuriger* [2003] 3 NZLR 121 for discussion on limiting a mediator's conduct





in a "med-arb" arrangement. If you are asked by the parties to undertake a process which is foreign to you it will be prudent to explore with the parties what they are trying to achieve so as to discuss process options and how they might best be managed. This includes giving consideration to whether or not you should be accepting the appointment.

#### **Ethical Statement 4**

A member should accept an appointment only if they have the ability to conduct the process in an efficient and timely manner.

#### **Commentary**

The axiom "Justice delayed is justice denied" applies. One of the advantages of alternative dispute resolution processes promoted by AMINZ is speed of resolution. The Arbitration Act 1996 requires timeliness and efficiency of the arbitrator. See article 14 (1). Other legislation such as the Construction Contracts Act 2002 imposes strict time limits within which the adjudication must operate.

Mediators should not accept appointment unless they can deal with the matter in a timeframe that responds to party needs and does not jeopardise the process working as a consequence of delay.

#### **Guidance**

Every matter is different and time expectations have to have regard for the nature of dispute, possibly its history, in any event, and the process being applied to its resolution.

Arbitrators have a statutory responsibility to positively drive the process through to a conclusion. This duty remains even in the face of an obdurate party pursuing delay. Just as the courts are now quite interventionist when it comes to setting timetables for the process, the arbitrator similarly should be setting timetables and insisting on adherence where reasonable to do so.

In as much as mediation is a cooperative process, nonetheless the mediator must be aware of any relevant statutory timetable limitations impacting on the process and ensure that the mediation does not prejudice the parties pre-existing timetabling in relation to external processes. If potential prejudice is an issue the management of it will need to be resolved in discussion with the parties. If the mediation is to take place in the midst of other external timetable directions or orders then availability to mediate must work around that timetabling.

Successful mediation is often a matter of timing. That is, the time is perceived by the parties or their counsel to be ripe for settlement. Delay can result in a lost settlement opportunity.

If a member cannot confidently meet required or expected time demands to ensure the efficient and timely discharge of the process then the member's obligation is to decline the appointment.

#### **Ethical Statement 5**

The process should be conducted with diligence.

#### **Commentary**

The Shorter Oxford English Dictionary Sixth Edition 2007 defines "diligence" to mean:

1. "careful attention; heedfulness, caution
2. the quality of being diligent; industry, assiduity
3. speed, dispatch, haste".

This Ethical Statement is an injunction for the member to at all times conduct the process with care and applying persistence and effort in doing so. A hallmark of professionalism is the application of diligence to the task.

Article 14(1) of the Arbitration Act 1996 provides that undue delay by the arbitrator can be a ground for terminating the appointment.



## Guidance

This Ethical Statement is in part linked to the requirement to have time to undertake the task. But even with time for the task there will always be an obligation to attend to the work with care, persistence both in understanding the various points of view and working towards an outcome along with the necessary effort to meet the “care”, “timely” and “efficient” obligations.

Diligence is also about preservation of standards. It includes ensuring that you have the knowledge and experience necessary to carry out the task.

## Ethical Statement 6

A member, subject to legal obligations or other recognised exceptions must observe the duty to protect the privacy of those participating in the process, and the confidentiality of all elements of the process.

## Commentary

There are privacy and confidentiality expectations in most dispute resolution processes. Some are given statutory recognition as in the Arbitration Act 1996 and the Construction Contracts Act 2002. Confidentiality protection and exceptions given by statute will prevail over the Code.

“Privacy” is defined in the Shorter Oxford English Dictionary Sixth Edition 2007 to mean:

1. “the state or condition of being withdrawn from the society of others or from public attention; freedom from disturbance or intrusion; seclusion”
2. absence or avoidance of publicity or display; secrecy
3. a private or personal matter; a secret
4. The state of being privy to something, privity”.

“Confidential” is defined to mean:

1. “indicating private intimacy; inclined to impart confidences, confiding
2. spoke or written in confidence; not intended for public knowledge
3. enjoying another’s confidence; entrusted with secrets; charged with a secret task”.

The right to privacy and confidentiality belongs to the parties.

Both of these duties are common to other professions including medicine and law. The approach to these duties taken by other professions can be a helpful guide as to how we as members of a professional Institute should apply these duties to ourselves.

The duty is an on-going duty from the time of appointment and continues on indefinitely after the appointment when the process has concluded. Where a participant dies then the duty is owed to their personal representative.

## When disclosure is permitted

Disclosure is only permitted under the most limited of circumstances. Examples of such circumstances include:

1. Where disclosure is required by law, or by order of a court.
2. Where the member reasonably believes that disclosure is necessary to prevent a serious risk to the health, safety or welfare of any person.
3. Where the intention to commit a crime is disclosed, and the member has reasonable grounds for believing that the crime will be committed, the member then has a duty to report that intent to the appropriate authority.
4. Where a party has expressly authorised a disclosure to another and where that information is solely held by that party. Where the information is held by more than one party, then all parties having the information must authorise the disclosure.
5. Where it is necessary to protect the interests of a party where the member comes to appreciate that there are genuine incapacity issues applying to a party in the process.



6. Where disclosure is necessary to give effect to any insurance cover arrangements, or collection of unpaid professional fees and disbursements incurred in the course of the process.
7. Where disclosure is necessary to respond to or to defend a complaint, allegations, claim or other form of proceeding against the member brought by a party to the process. Disclosure is limited to matters solely concerned with the complainant party in the absence of written consent to waive confidentiality by any other participating party.

Where any of these circumstances apply the disclosure as an exception to this Ethical Statement is only allowed to the minimum extent reasonably necessary to discharge the exception.

### **Guidance**

The ethical duties concerning privacy and confidentiality are given powerful recognition in most alternative dispute resolution processes.

Any breach of these obligations by a member is likely to be viewed as a most serious issue for the member concerned.

If reliance is to be placed on any of the exceptions then the member is advised to discuss resort to the relevant exception with a member of AMINZ holding Fellowship status.

Two questions may need to be considered. First whether or not a particular exception really applies, and second, what should the parameters of the disclosure be so as to meet the needs of the relevant exception while endeavouring to preserve as much of the confidentiality duty as possible.

Where guidance is sought from a Fellow for the purpose of determining the proper course of professional conduct then both the member seeking guidance and the person giving advice are encouraged to make careful notes of the conversation and conclusions. These notes should be exchanged, each with the other prior to the advice being acted upon. If the notes exchanged reveal any uncertainty about the advice given then further discussion should take place.

While seeking advice will not necessarily discharge the member from responsibility for a breach, where the advice is given and followed, then being able to show that the advice was adhered to is likely to be treated as a mitigating circumstance.

In every instance, the member who seeks to apply an exception to this Ethical Statement must take ultimate responsibility for their own actions.

Because a particular process and its setting imply a lack of privacy and confidentiality, for example a marae based mediation, the member's assumption should always be that privacy and confidentiality still apply, but within the expanded parameters. In the example above, the rights to privacy and confidentiality would be held by those who participated in the process.

Good practice requires that parties and other participants to an arbitration or mediation understand the privacy and confidentiality expectations of the parties, and the law where appropriate. In relation to mediation that understanding is best evidenced by having the parties and other participants including legal counsel sign a confidentiality undertaking once they have read it and it has been explained to them.

### **Ethical Statement 7**

Confidential information received by a member as a third party neutral, or in some other role, in a process may not be:

1. used to the members personal advantage, or
2. In the absence of party consent, be used in other separate process involving one of the original parties and a third party.

A member may not put themselves in a position which might give the impression that they have relied upon or used confidential information gained in one process when acting as a third party neutral, or in



some other role, in a second or subsequent unrelated process and whether or not one of the original parties is involved in the second or subsequent process.

### **Commentary**

This first part of this Ethical Statement is akin to a fiduciary relationship. A member may not use confidential information gained in the process to their personal advantage. The advantage extends to giving that advantage to a third party such as a spouse, other relative or friend.

The second part of this Ethical Statement effectively inhibits a third party neutral from again acting in that role where similar facts to a previous process apply and particularly where one of the parties in the second or subsequent process is common to the original process.

### **Guidance**

The duty not to profit from use of confidential information received by a member in the process is absolute. It applies to all members involved in the process, not just the third party neutral. The second element of this Ethical Statement is best managed, if reasonably practicable, by full pre-appointment disclosure to the parties of your involvement in the first process when being asked to take appointment in a subsequent similar fact and or similar party process. That duty might also require you to indicate that you are privy to certain confidential information which arose in the first process but which cannot be shared or used in the subsequent process. It will then be for the parties to decide whether or not to appoint you to the role. If disclosure is made after your appointment and the party objects to your remaining in the role you must step aside. A useful discussion on the appearance of impartiality issues relevant to this Ethical Statement may be read in the cases of: *Carter Holt Harvey Forests Limited v Sunnex Logging Limited* [2001] 3 NZLR 343 (CA); applied in *South Island Commercial (2004) Limited* and another v *Kiwi Green Island Club Limited*, unreported, High Court Christchurch Registry, CIV 2008-409-000261, 15 December 2008, French J; *Auckland Casino Ltd v Casino Control Authority* [1995] 1 NZLR 142 (CA); *Saxmere Company Ltd v Wool Board Disestablishment Co Ltd* [2010] 1 NZLR 35 (SC), and, *Saxmere Company Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2010] 1 NZLR 76 (SC).

### **Ethical Statement 8**

1. A member should not act with impropriety and should not give the appearance of impropriety.
2. A member should not harm AMINZ nor bring the reputation of AMINZ into ill repute.

### **Commentary**

"Impropriety" is defined in the *Shorter Oxford English Dictionary Sixth Edition 2007* to mean:

1. "incorrectness; inaccuracy"
2. "unbecomingness, unseemliness, indecency; improper conduct"
3. "unsuitableness, inappropriateness"
4. "an instance of improper conduct, language, etc".

These ethical obligations go beyond how members conduct themselves in relation to a particular dispute. A criminal prosecution unrelated to Institute affairs and leading to a conviction may result in a finding of impropriety. Not every crime will necessarily be treated as a breach of this Ethical Statement. It will depend on the nature of the crime, its gravity, impact on others, mitigating circumstances and possibly even the public awareness about and response to the event.

Behaviours which are judged to harm AMINZ or to bring its reputation into disrepute are likely to be behaviours incompatible with holding Institute membership.

### **Guidance**

The professional duty is at all times to act with propriety – meaning to apply a correctness of behaviour and standards to the way one lives one's life.

Obviously within AMINZ there will be a range of views as to how behaviours ought to be judged. Some key indicators include how other professional bodies have responded to the particular event, for example by striking off a member for a standards breach, or perhaps through conviction for a particular crime followed by imprisonment or some other liberty imposition as a punishment.

### **Ethical Statement 9**

A member should recognise that mediation is based on the principle of self determination by the parties.

### **Commentary**

The voluntary nature of the process includes the right to walk away from it. Mediators must avoid coercive conduct in an effort to achieve an outcome.

Where parties are unrepresented the mediator has an even greater obligation towards the parties to protect the principle of self determinations. If that principle is lost through inappropriate process or mediator conduct it can bring the process of mediation into ill repute.

### **Guidance**

The Ethical Statement is not a call to redress power and balances. Rather the obligation is to ensure that the mediator creates an environment where the parties can exercise self determination particularly, but not only, when it comes to determining whether or not to settle.

Coercive behaviours may include:

1. Extending the time of the mediation beyond which parties should not be expected to make important decisions. In short, sitting too late or too long is unsafe.
2. Bullying behaviour including not controlling the process so as to prevent oppressive behaviours by one party against another.

### **Ethical Statement 10**

A member should make decisions in a just, independent and considered manner.

### **Commentary**

This Ethical Statement is fundamental to all decision making.

Under many of the determination processes the third party neutral is entrusted with very wide powers and typically there is no monetary jurisdictional limit imposed. For example see section 12 (1) (a) of the Arbitration Act 1996 which states:

- “(1) An arbitration agreement, unless otherwise agreed by the parties, is deemed to provide that an arbitral tribunal –
- a. May award any remedy or relief that could have been ordered by the High Court if the dispute had been the subject of civil proceedings in that Court”.

For the parties, whether or not the dispute involves a modest amount or something very significant the issue is all important and they generally have the right to expect that judicial decision making characteristics will be applied to their matter.

The Shorter Oxford English Dictionary Sixth Edition 2007 defines “just” to mean:

1. “that does what is morally right, righteous
2. impartial in one's dealings; giving everyone his or her due; fair, unbiased
3. a in accordance with the principles of moral right or of equity; equitable, fair; (of a reward, punishment, etc) deserved, merited. b In accordance with the law, lawful, rightful
4. having reasonable or adequate grounds; wellfounded



- conforming to a particular standard; proper; correct, appropriate".

Unless the parties to an arbitration have agreed to give the member to decide on an general justice and fairness basis (see Arbitration Act 1996 article 28 (3) ) moral judgment is irrelevant. Rather, in a legal context the word "just" embodies notions of fairness and observance of natural justice as understood and explained through the common law. Where the parties agree to dispense with certain natural justice requirements, others will still apply having regard to the particular circumstances of the case. "Independence" has already been discussed in the context of the Ethical Statement 2. It is a keystone to judicial decision making and applies with equal vigour to arbitrators, adjudicators and all those in the position of having to determine issues between two or more parties in conflict.

The "considered" requirement of this Ethical Statement is a reminder that although members are charged with conducting the process in an efficient and timely manner there is an overarching duty to give the matter careful thought. There is an obligation to take into account and weigh the arguments advanced on behalf of each of the parties before making the determination.

### **Guidance**

Those entrusted with decision making powers are expected to exercise those powers applying well identified judicial making characteristics. On occasion however, that expectation will be altered by party agreement. For example, the parties might agree that an arbitrator with specialist expertise can read the relevant documents, apply their own knowledge to the issue without necessarily advising the parties of what parts of that expertise were relied upon and then deliver a brief award. Here the parties are entrusting the arbitrator with a process which breaches many of the natural justice requirements conventionally applied to judicial process and decision making.

Where the parties agree that their decision maker should depart from conventional judicial process and decision making characteristics that agreement should be recorded in writing. If the parties have not recorded it themselves then it must be recorded by a memorandum from the decision maker to the parties. While parties may waive their rights to challenge apparent bias (see Arbitration Act 1996 articles 12 and 13) actual bias or partiality can never be waived. If independent decision making is not possible then the member must either decline the appointment, or if appointed must give notice to withdraw.

If you are in doubt as to how this Ethical Statement might apply to you on the particular facts, you are encouraged to seek advice from and to discuss the issue with a senior colleague of Fellowship status. Where reasonably practical, notes of this discussion ought to be exchanged prior to the member coming to a final decision on how to act. If that exchange of notes demonstrates uncertainty as to what was decided further discussion should follow.

### **Ethical Statement 11**

A member should fully disclose and explain the basis of fees and charges before accepting appointment.

### **Commentary**

The basis for charging should be transparent and be readily understood by the public. Note that the Fair Trading Act 1986 and the Consumer Guarantees Act 1993 both apply to the provision of a member's services.

### **Guidance**

If you have a website you are advised to include the basis for charging as part of the information available on the web.

Members are encouraged to enter into written contracts with the parties and those contracts must include the basis for billing fees and disbursements. That information must be drawn to the attention of the parties or their legal advisers/representatives before they are asked to sign the contract.



### **Ethical Statement 12**

Advertising or promotion by a member must be factually accurate.

#### **Commentary**

Both the Fair Trading Act 1986 and Consumer Guarantees Act 1993 apply. But in addition to the statutory obligations and consequence of breach there is also an ethical duty to ensure that advertising and promotion material is factually accurate.

The member is personally responsible for their own advertising in print or soft copy form. There is a high duty not to mislead the public or colleagues when publishing advertising and promotional material.

#### **Guidance**

There can be a risk of hyperbole when setting out ones advertising and promotional material. The member is best positioned to test the accuracy of statements made and to ensure that the individual and collective statements fairly and appropriately state facts that are true in all respects.

### **Ethical Statement 13**

A member has an ethical duty to uphold AMINZ Code of Ethics.

#### **Commentary**

This Ethical Statement makes the point that compliance with the Code is the responsibility of each and every member. Therefore, it is a requirement and expectation of AMINZ that all members of AMINZ are conversant with this Code of Ethics comprising the Ethical Statements, Commentary and Guidance provisions.

It is important to appreciate that the seeking of guidance from a Fellow of AMINZ will not of itself absolve a member from responsibility for breaching the Code, although following the advice given will very likely be accepted as a mitigating circumstance in the event of a breach and a complaint arising.

#### **Guidance**

Where advice from a Fellow is sought to help the member to determine an appropriate course of professional conduct both that member and the advising Fellow where practicable prior to the advice being acted on ought to exchange their records of the discussion and advice in writing. In the event of conflict of understanding as to the advice given a further discussion should follow which again ought to result in an exchange of memoranda.



## **Schedule 6**

### **Panel Membership Admission and Review Guidelines for Continuing Professional Development Committee (See AMINZ By-Laws – By-Law 10)**

#### **Admission Panel**

The following matters may be taken into consideration by the Panel Committee in considering any application for admission to a Panel administered by the Institute.

- Applicant's relevant knowledge
- Requisite experience
- Requisite qualifications
- Three recent determinations or agreements, anonymised
- Necessary personal qualities for Panel membership
- Comments from referees
- Other matters as determined by Committee and advised to Applicant

#### **Review of Panel Membership**

- As above
- Evidence of CPD since last reviewed by Committee
- If deemed necessary by the Panel Committee oral and/or written testing of Applicant.