

# ADR Register

## Official response to the SALRC on project 94 (ADR reform)

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All references in this document are made against the approved (valid) version of the applicable document.

All public documents are published on our website <https://www.adr-register.com>.

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# Introduction

- ADR Register is invited to attend to the SALRC meeting dated 08.10.2019.
- In preparation, ADR Register received the agenda and background note
- ADR Register chooses to formalize its response by filing this document.
- This document is to be considered as a public document and will be shared with our certified practitioners and stakeholders.
- ADR Register appreciates the invitation.
- ADR Register believes in Alternative Dispute Resolution and its position in and contribution to South Africa and all South Africans.
- **ADR Register wants to contribute positively and with a future-orientated approach to the SALRC project 94.**

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# Mediators in SA: the current situation

## General

- In South Africa, mediators have no obligation to accredit themselves. No regulatory requirements thereto exist.
- Currently, a statutory or regulatory body for mediators, described anywhere in South Africa law, does not exist.
- Although in a way presenting them as such, DISAC (SA Dispute Settlement Accreditation Council) and (NABFAM (National Accreditation Board for Family Mediators) are not the official statutory or regulatory body for ADR practitioners, mediators included, as described in South Africa law.
- Also, both organizations (DISAC and NABFAM) do not represent the South Africa ADR Industry currently active/present in South Africa as the mandate thereto does not exist and a substantial number of ADR organizations and individual ADR professionals, mediators included, are not connected, in any way, to these organizations.
- The current criteria set by DISAC & NABFAM do not meet the international standards set by IMI and ISO 17024, as these criteria fail to comply with the compulsory level's knowledge, skills, and experience. Consequently, DISAC and NABFAM mediators can't register with ADR Register if following ONLY the standard/regular and globally operated application procedure.
- With regret, ADR Register concludes it is – till now – not possible to establish cooperation with DISAC and NABFAM. Communication thereover indicates ADR Register is required to waive its independence and impartiality in order to obtain cooperation. For obvious reasons, ADR Register is not willing to comply with this 'requirement'.
- Clients (the organizations and individuals assigning mediators) are not involved, in any way, in the quality process. This is to be considered as a 'major non-conformity' to success.

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## ADR Register

- ADR Register did initiate a pilot for South African mediators. The pilot facilitates under grandfathering conditions the option for South African mediators, if registered, or formerly registered, with a by ADR Register accepted group or body, to certify with ADR Register. The pilot ends by Jan 1, 2020.
- After Jan 1, 2020, the regular application procedure and criteria apply.
- ADR Register has now approx. 100 mediators based in South Africa registered and certified.
- ADR Register proudly announces that up from Jan 1, 2020, in co-operation with South African training providers, mediators can follow training programs that comply with the IMI and ISO 17024 standards, making it possible for individual mediators to certify with ADR Register against the international standards.

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# ADR Register's comments to the SALRC background note

## Comment 1

- *'The aim of the project is to consider the development of legislation to promote the optimal use of alternative dispute resolution (ADR), including mediation, in order to provide citizens with an additional avenue to access to justice.'*
- This is quite confusing. ADR focuses on solutions, not necessarily justice. The main purpose of ADR is to establish a situation in which the conflict/dispute owners can continue with life or processes, achieving this via time and cost-effective ADR processes, such as arbitration, conflict coaching, mediation, negotiation, or any hybrid ADR process. Including justice is an option, not a condition or requirement. As effect, promoting ADR, mediation included, does not need legislation. Promotion needs an active professional group (the practitioners) and pro-active government who together - as a joint effort - implement facilitating and supporting measurements (public-private cooperation). Government includes the Ministry of Justice, however, is thereto not to limited; it is highly recommended that all Ministries are involved and adopt ADR. Facilitating measurements likely have a financial component, for instance: (partially) waiving costs for clients in financial needs in combination with compensating the handling practitioners accordingly. Practicing the principle 'ADR first' is an effective way of supporting: stimulate the use of ADR processes before getting access to justice-related processes. If legislation is considered, the legislation should be limited to setting criteria for quality control related processes. Holding a register is not a public task or responsibility. Holding, handling and maintaining a register, including all operational procedures, should be done by the Industry itself. A register held by a government and including promotion in legislation and is delicate, as it breaches with the principles of the free market. People need access to solutions and/or justice. ADR is not a component of justice and vice versa. Both stand-alone and are complementary. Working together is a win-win for both and the clients.

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## Comment 2

- *'As a first step, the SALRC is concentrating on the development of a generic Mediation Act for South Africa. Basic definitions and principles pertaining to mediation will be included in this Act. These definitions and principles will also serve as a core or basis for any other ADR related projects and legislation.'*
- A mediation act should not be the first step.  
If you want to build a car, you don't start with designing the windows ..... In order to design a proper window, the designer should have upfront knowledge about and specs of the car.  
The note does not include a long-term strategy and related (meta) goals/targets. As an effect, designing and implementing a mediation act without the long-term strategy and goals might be ineffective and feels like driving without specific directions. ADR Register recommends developing such a long-term strategy and goals for ADR, then breaking the outcome down to a detailed time frame and specific components and sub-goals/targets. Anyway, mediation is an ADR component and not vice versa. Legislation should focus on ADR as a system and process, with detailed sub-legislation for ADR components, mediation included.

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### Comment 3

- 'Accreditation, certification, recognition'
- 'national, international (abroad)'
  
- Accreditation, certification and recognition are not to same.
- It is advised to follow the international context and interpretation.

#### Accreditation

- Accreditation means trust and it authorizes the accredited organization or person to certify. Thus: certification is handled by a thereto accredited organization.
  
- *Accreditation is the independent evaluation of conformity assessment bodies against recognized standards to ensure their impartiality and competence. Through the application of national and international standards, government, procurers and consumers can have confidence in the calibration and test results, inspection reports and certifications provided.*
- *Accreditation bodies are established in many countries with the primary purpose of ensuring that conformity assessment bodies are subject to oversight by an authoritative body.*
- *Accreditation bodies, which have been evaluated by peers as competent, sign arrangements that enhance the acceptance of products and services across national borders, thereby creating a framework to support international trade through the removal of technical barriers. These arrangements are managed by the International Accreditation Forum (IAF), in the fields of management systems, products, services, personnel and other similar programs of conformity assessment, and the International Laboratory Accreditation Cooperation (ILAC), in the field of laboratory and inspection accreditation.*
- *(source: IAF)*
  
- Internationally, accreditation is ruled by the IAF (International Accreditation Federation).
  
- *The IAF is the world association of Conformity Assessment Accreditation Bodies and other bodies interested in conformity assessment in the fields of management systems, products, services, personnel and other similar programs of conformity assessment. Its primary function is to develop a single worldwide program of conformity assessment which reduces risk for business and its customers by assuring them that accredited certificates may be relied upon. Accreditation assures users of the competence and impartiality of the body accredited.*
- *(source IAF).*



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- Almost all countries are participating in IAF.
  - South Africa is represented by the official South Africa Body SANAS (South African National Accreditation System).
  - International Mediation Institute (IMI) is a public/private accreditation body for mediation and mediators. ADR Register is accredited by IMI for the certification of mediators based in Africa and Europe.
  - EMCI Register, like ADR Register a subsidiary of Global Network Group, is accredited by the Dutch Accreditation Council for product certification against ISO 17065. Based on this accreditation, EMCI Register is appointed by the Dutch Minister for Water management and Infrastructure as Notified Body for the Recreational Craft Industry (EU directive 2013/53/EU).

### Certification

- Certification delivers guarantees and is made visible by certificates issued by certification bodies. Certification bodies are accredited and certify against criteria set by IAF, ISO or other authorized bodies.
- Internationally, the International Standardization Organization (ISO) is leading on setting norms (standards, criteria, processes).
- *ISO is an independent, non-governmental international organization with a membership of 164 national standards bodies.*
- *Through its members, it brings together experts to share knowledge and develop voluntary, consensus-based, market-relevant International Standards that support innovation and provide solutions to global challenges.*
- *International Standards make things work. They give world-class specifications for products, services, and systems, to ensure quality, safety, and efficiency. They are instrumental in facilitating international trade.*
- *ISO has published 22812 International Standards and related documents, covering almost every industry, from technology to food safety, to agriculture and healthcare. ISO International Standards impact everyone, everywhere.*
- *(source: ISO)*

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- Almost all countries are participating in ISO.
  - South Africa is represented by the official South Africa Body SABS (South African Bureau of Standards).
  - The ISO norm 17024 sets the standards for the certification of professionals.
  - *ISO/IEC 17024:2012*
  - *Conformity assessment — General requirements for bodies operating certification of persons*
  - *ISO/IEC 17024:2012 contains principles and requirements for a body certifying persons against specific requirements and includes the development and maintenance of a certification scheme for persons.*
  - *(source: ISO)*
  - Global Network Group (ADR Register) is ISO 9001 certified by Lloyds Register. Lloyds Register is thereto accredited by UKAS (United Kingdom Accreditation Services). Following our ISO 9001 certified management system, ADR Register certifies professional groups and individuals against ISO 17024. Mediators are additionally certified against the IMI norms (criteria).

#### Recognition

- Recognition is not internationally not regulated.
- There is no official overview by accreditation and/or certification bodies unless otherwise implemented by the organizations who are is granting i.c. receiving recognition.

#### National or international?

- The certification of mediators is internationally ruled by ISO 17024 and the IMI criteria.
- There is no need to develop a 'new system'. A proven system exists, is available and currently operated by ADR Register out of South Africa and for South Africa Mediators.
- ADR Register strongly recommends complying with international settings. It facilitates that South Africa Mediators stay globally connected and have easy access to assignments with a wider scope than just 'local or national'. For specific mediation processes, such as business and cross-border mediation, this is necessary key to success.

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# ADR Register's advice on SALRC project 94

- *'The way forward in South Africa'*

## **Public/private cooperation**

- Establish a public/private cooperation between the ADR Industry and the SA government.

## **Accreditation body**

- Establish one ADR accreditation body for South Africa.

### **- The body delivers:**

- One national register for ADR practitioners

### **- The body itself:**

- Gets ISO 17024 accredited with SANAS (option, not necessary)
- Gets SAQA recognized as professional Body for the ADR Industry (option, not necessary)
- Cooperates on norms for ADR (criteria, standards) with SABS (definitely)
- Implements the IMI criteria for mediators (definitely)

### **- The body sets criteria for:**

- Appointing certification bodies
- Accrediting training providers
- Certification of training programs and trainers
- Certification of ADR practitioners
- Operational ADR processes, handled by practitioners

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- The body identifies 4 stakeholder groups:

- **Clients**  
Those who assign ADR practitioners, such as individuals, companies, governments.
- **Practitioners**  
Those who represent practitioners, for instance, professional groups, branch organizations, companies, or individual ADR practitioners and ADR companies.
- **Training providers**  
Those who deliver training programs handled by qualified trainers
- **Certification bodies**  
Those who handle independent and impartial audit- & certification processes.

The stakeholder's groups are represented in the Body's board and have voting rights.

The government is to be considered as a member of the stakeholder group clients. In addition, specific rights can be granted to the government based on legislation. The term government refers broader than justice only; all ministries, departments, authorities are supposed to participate.

All existing organizations representing practitioners (like SAAM etc.) are likely to join the Body as part of the stakeholder group practitioners. As effect, all efforts done by the industry so far will be respected and implemented.

ADR Register steps in as a certification body. Important: we do understand other certification bodies can qualify. No exclusive rights or monopoly required from our site.

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## **Blueprint for Africa**

- Optionally, the cooperation is a blue-print for an ‘umbrella register’ for Africa, formed out of all national registers of the individual countries forming the Africa continent.

## **Option 1, 2, 3 4, or 5?**

- ADR Register’s advice, if implemented, delivers a strategic mixture of options 1, 2, 3, 4 or 1, 2, 3, 5 as mentioned in the background note. ADR Register believes option 5 is not necessary, and therefore prefers the mixture 1, 2, 3, 4.

## **More detailed vision**

- ADR Register will publish later this month a more detailed flowchart. The flowchart will be forwarded to the SALRC.

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# About ADR Register

## General

- Global Network Group (GNG) is proud to be active in South Africa and to serve several branches/industries. GNG has registered offices in The Netherlands, United Kingdom, and South Africa. In South Africa, GNG is officially registered with CIPC as Pty Ltd.
- ADR Register, as a subsidiary of GNG, serves the branch Alternative Dispute Resolution by certifying arbitrators, conflict coaches, mediators, and negotiators.
- Our competence criteria for mediators are following the criteria set by the International Mediation Institute (IMI). Currently, the IMI criteria are globally adopted by numerous organizations and countries.
- Our process criteria for certifying professionals are based on the ISO 9001 and 17024 norms set by the International Standardization Organization (ISO).
- The ISO 17024 is a conformity assessment against the general requirements for bodies operating certification of persons.
- The ISO 9001 sets the criteria and requirements for quality management systems.
- The ISO criteria guarantee the market, interested parties, and stakeholders a solid monitored and sustainable process.
- ICR Coach Register serves the professional coaches branch and certifies several types of coaches.
- EMCI Register (DMI-EMCI) is an EU officially appointed Notified Body for the recreational craft industry (RCD 2013/53/EU) and also certifies maritime brokers, surveyors, harbormasters. Both registers are also a subsidiary of GNG.
- In South Africa, ADR Register is represented by Mrs. Theresa du Preez (born March 23<sup>rd</sup>, 1965, South Africa, and a South African passport holder).

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## Registration and certification body

- ADR Register is a registration/certification body and operates impartially and independently. Consequently, we are not a branch organization, a representing body for professionals or their clients, or a training provider.
- ADR Register holds the certification scheme ADR International Certified Conflictnavigator®.
- The certification scheme distinguishes main- & sub scopes, sub types, and levels.
- Main scopes are arbitrator, conflict coach, mediator, and negotiator.
- Sub scopes are court mediator and family mediator.
- Several sub types and levels exist.

## Our accreditation, certification, and recognition

- ADR Register is accredited by International Mediation Institute as Qualifying Assessment Program (QAP) for the continents Africa and Europe.
- Global Network Group is ISO 9001 certified by Lloyds Register Netherlands and has registered its ISO 9001 certification with UKAS London. As Global Network Group is certified under the so-called multi-site regime, all branches and subsidiaries are ISO 9001 certified.
- Global Network Group is appointed by the Dutch Minister for Health, Welfare and Sport as an official dispute handling organization for the Health Industry. The appointment is ruled by the WKKGZ law.
- EMCI Register is ISO 17065 (product certification) accredited by the Dutch Accreditation Council and appointed by the Dutch Minister of Water management & Infrastructure as official EU Notified Body for the Recreational Craft Industry, which is ruled by EU directive RCD 2013/53/EU.