

## **PROCEDURAL RULES – alternative dispute resolution**

Supreme Court Act	<b>MEDIATION – REJECTION OF EVIDENCE</b> <b>Section 24A</b> : No evidence shall be admitted at the hearing of the proceeding of anything said or done
Supreme Court Act	<b>PROTECTION OF SPECIAL REFEREES, MEDIATORS AND ARBITRATORS</b> <b>Section 27A</b> A mediator, the same protection and immunity as a Judge of the Court has in the performance of his or her duties as a Judge.
Supreme Court Rules	<b>COURT ORDERED MEDIATION</b> <b>Order 50.07</b> : At any stage of a proceeding the Court may, with or without the consent of any party, order that the proceeding or any part of the proceeding be referred to a mediator.  <b>Order 50.07</b> : The mediator shall not make any report to the Court or the Costs Court, as the case requires, other than a report as to whether the mediation is complete.
Civil Procedure Act	<b>ADR as a purpose of the CPA</b> <b>section 7</b> : A purpose of the Civil Procedure Act its facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute. This may be achieved by: Any appropriate dispute resolution process
Civil Procedure Act	<b>Overarching obligation of the CPA</b> <b>s22</b> Must use reasonable endeavours to resolve a dispute by agreement between the persons in dispute, including, if appropriate, by appropriate dispute resolution, UNLESS it is not in the interests of justice to do so, or the dispute is such that only judicial determination is appropriate.
Civil Procedure Act	<b>Court powered mediation</b> <b>Under section 66</b> , a court may refer all or part of a civil proceeding to ADR which under <b>66(2)</b> should not have a binding outcome on the parties  <b>Mediation – rejection of evidence</b> No evidence shall be admitted of anything said in the course of ADR pursuant to <b>section 67</b> , unless the court otherwise orders, having regard to the interests of justice and fairness.  <b>Protection of Special Referees, Mediators and Arbitrators</b> Under <b>section 68</b> , a judicial officer who has a connection to the resolution has the same protection and immunity as a judge of the supreme court in the performance of their duties as a judge.

## **PROCEDURAL RULES – case management**

Supreme Court Rules	<b>34.01</b> At any stage of a proceeding, the Court <b>may give any direction</b> for the conduct of the proceeding which it thinks <b>conducive to its effective, complete, prompt and economical determination</b> .
Civil Procedure Act	<b>Section 47</b> for the purposes of ensuring that a <b>civil proceeding is managed and conducted in accordance with the overarching purpose</b> , the court may give any direction or <b>make any order it considers appropriate</b> , including any directions given or orders made— (a) <b>in the interests of the administration of justice</b> ; or (b) <b>in the public interest</b> .  Under this section, a court can impose restrictions on the management and conduct of any matter, including the conduct of any party.  <b>CASE MANAGEMENT POWERS</b> A court may actively case manage by - <b>section 47(3)</b> <ul style="list-style-type: none"> <li>- Giving directions to ensure that the civil proceeding is conduct promptly</li> <li>- Identifying the issues</li> <li>- Deciding the order in which the issues should be resolved</li> <li>- Encouraging the parties to cooperate, settle or use ADR.</li> <li>- Control the progress of the proceeding by fixing timetables and making use of technology.</li> <li>- Limiting the number of witnesses, the time for cross examination or what matters may be subject to cross-examination.</li> </ul> <b>WHEN DOES CASE MANAGEMENT APPLY?</b> Under <b>section 48</b> , the court has the power to order and direct pre-trial procedures and under <b>section 49</b> , the court has the power to order and direct procedures and conduct of the hearing.

	<p><b>STATEMENT OF ISSUES - - section 50</b></p> <p>The court may order parties to prepare a statement which summarises the key issues in dispute in the proceeding</p> <p><b>FAILURE TO FOLLOW DIRECTIONS - - section 51</b></p> <p>May result in:</p> <ul style="list-style-type: none"> <li>- Dismissal of the proceeding generally or in relation to an issue</li> <li>- Limitation of the plaintiff claim or the defendant defence</li> <li>- Rejection of evidence the person seeks to adduce</li> <li>- Costs direction</li> </ul>
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## **ETHICAL OBLIGATIONS – owed by SOLICITORS (under conduct rules)**

### **FUNDAMENTAL DUTIES**

#### **PARAMOUNT DUTY**

Solicitors Conduct Rules	<b>3</b> A solicitor's <b>duty to the court</b> and the <b>administration of justice is paramount</b> and <b>prevails</b> to the <b>extent of inconsistency</b> with any other duty.
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#### **OTHER FUNDAMENTAL DUTIES**

Solicitors Conduct Rules	<p><b>4 Other fundamental duties</b> - A solicitor must:</p> <ul style="list-style-type: none"> <li>- Act in the <b>best interests</b> of a client</li> <li>- be <b>honest</b> and courteous in all dealings</li> <li>- deliver legal services <b>competently, diligently</b> and as <b>promptly</b> as reasonably possible,</li> <li>- <b>avoid any compromise</b> to their integrity and professional independence</li> <li>- comply with these Rules and the law.</li> </ul>
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#### **DISHONEST CONDUCT**

Solicitors Conduct Rules	<p><b>5</b> A solicitor must not engage in conduct, in the course of legal practice or otherwise, which—</p> <ul style="list-style-type: none"> <li>- demonstrates that the solicitor is <b>not a fit and proper person</b> to practise law</li> <li>- is likely to a material degree to <ul style="list-style-type: none"> <li>o be prejudicial to, or <b>diminish the public confidence in, the administration of justice,</b></li> <li>o bring the <b>profession into disrepute.</b></li> </ul> </li> </ul>
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### **DUTY TO THE CLIENT**

#### **COMMUNICATION OF ADVICE TO CLIENT**

Solicitors Conduct Rules	<p><b>7.1</b> A solicitor must provide <b>clear and timely advice</b> to assist a client to <b>understand</b> relevant legal issues and to make <b>informed choices</b> about action to be taken during the course of a matter, <b>consistent with the terms of the engagement.</b></p>
<b>Rule 7</b>	<p><b>7.2</b> A solicitor must inform the client or the instructing solicitor about the <b>alternatives to fully contested adjudication</b> of the case which are reasonably available to the client, unless the solicitor believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the matter.</p>

#### **CLIENT INSTRUCTIONS**

Solicitors Conduct Rules	<b>Rule 8</b> A solicitor must <b>follow a client's lawful, proper and competent instructions.</b>
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#### **CONFIDENTIALITY**

Solicitors Conduct Rules	<p><b>9.1</b> A solicitor <b>must not disclose any information which is confidential</b> to a client and acquired by the solicitor during the client's engagement to any person who is not—</p> <p><b>9.1.1</b> a solicitor who is a partner, principal, director, or employee of the solicitor's law practice, or</p> <p><b>9.1.2</b> a barrister or an employee of, or person otherwise engaged by, the solicitor's law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client,</p>
<b>Rule 9</b>	

	<p><b>9. 2 EXCEPT if:</b></p> <p><b>9.2.1</b> the client expressly or impliedly <b>authorises</b> disclosure,</p> <p><b>9.2.2</b> the solicitor is permitted or is <b>compelled by law</b> to disclose,</p> <p><b>9.2.3</b> the solicitor discloses the information in a <b>confidential setting</b>, for the sole purpose of <b>obtaining advice</b> in connection with the solicitors legal or ethical obligations.</p> <p><b>9.2.4</b> the solicitor discloses the information for the sole purpose of <b>avoiding the probable commission of a serious criminal offence</b></p> <p><b>9.2.5</b> the solicitor discloses the information for the purpose of <b>preventing imminent serious physical harm to the client or to another person</b>, or</p> <p><b>9.2.6</b> the information is disclosed to the <b>insurer</b> of the solicitor, law practice or associated entity.</p>
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**COFLICTS CONCERING FORMER CLIENTS**

<p>Solicitors Conduct Rules</p> <p><b>Rule 10</b></p>	<p><b>10.1 A solicitor and law practice must avoid conflicts between the duties owed to current and former clients.</b></p> <p><b>10.2</b> A solicitor or law practice which is in possession of information which is confidential to a former client where that information might reasonably be concluded to be material to the matter of another client and detrimental to the interests of the former client if disclosed, <b>must not act for the current client in that matter</b></p> <p>UNLESS—</p> <p><b>10.2.1</b> the former client has given <b>informed consent</b> to the disclosure and use of that information, or</p> <p><b>10.2.2 an effective information barrier has been established.</b></p>
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